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Trial

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 ROBERTA CAMPBELL,

4 Plaintiff,

5 v.

09 Civ. 9644 (WHP)

6 MARK HOTEL SPONSOR, LLC,

7 Defendant.

8 -----x

9 June 18, 2012
10 10:00 a.m.

11
12 Before:

13 HON. WILLIAM H. PAULEY III

14 District Judge

15
16 APPEARANCES

17 AMOS ALTER,

18 Attorney for plaintiff

19 - and -

COHEN & COLEMAN, LLP

20 BY: JOHN ALVIN COLEMAN, JR., Esq. - Of Counsel

JOSHUA N. COHEN

21 KRAMER LEVIN NAFTALIS & FRANKEL, LLP

22 Attorneys for defendant

23 BY: JEFFREY LOUIS BRAUN, Esq.

NATAN M. HAMERMAN, Esq.

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(In open court)

THE DEPUTY CLERK: The case of Campbell v. Mark Hotel.
Appearances for the plaintiff.

MR. ALTER: For the plaintiff, Amos Alter.

MR. COLEMAN: John Coleman, Coleman & Coleman.

MR. COHEN: Josh Cohen, Cohen & Coleman.

THE COURT: Good morning, gentlemen.

THE DEPUTY CLERK: Appearances for the defendant.

MR. BRAUN: Jeffrey Braun of Kramer Levin, your Honor.

MR. HAMERMAN: Natan Hamerman. Good morning.

THE COURT: Good morning. This matter is on for
trial. Are the parties ready to proceed.

MR. ALTER: Plaintiff is ready, your Honor.

MR. BRAUN: Defendant is ready, your Honor.

THE COURT: Other than the in limine motions that the
parties have submitted, are there any issues that either of you
want to raise before we proceed to the hearing?

MR. ALTER: Well, we had some questions which we
discussed with the clerk as to how you want certain procedural
matters handled.

For instance, the question is if we have a joint
exhibit, do we have to offer it or is it already deemed offered
because it's in the pretrial order? Similarly, with the facts
that are in the pretrial order, do we have to offer them, read
them in, say, your Honor, please look at fact X? How do you

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1 want it done?

2 THE COURT: Here is how we will do it. Even if the
3 parties have agreed on an exhibit, simply offer the exhibit. I
4 will ask your adversary whether he has an objection. He will
5 state that he has no objection, and the exhibit will be
6 received in evidence. That way it's in the record; it's in the
7 transcript; it's all in one place. The same is true with
8 respect to any stipulations of fact. Let's put them in the
9 record.

10 Now, with respect to the motions in limine.

11 First, the plaintiff seeks to exclude the testimony of
12 Lawrence Frawley as improper expert testimony. Frawley's
13 testimony, however, is admissible as a lay witness opinion
14 testimony under Rule 701. First, his testimony is based on his
15 perception; that is, his "firsthand knowledge or observation."
16 Federal Rule 701 Advisory Committee Note.

17 Second, his testimony is arguably helpful in
18 determining a fact in issue. The speed with which ConEdison
19 could have activated gas service is relevant to the issue of
20 whether there were conditions outside the suite preventing
21 Ms. Campbell's occupancy of the suite.

22 Finally, his testimony is not based on scientific,
23 technical or other specialized knowledge because it rests on
24 reasoning processes familiar to the average person in everyday
25 life. Citing *United States v. Garcia* 413 F.3d 201, 215 (2d

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1 Cir. 2005).

2 Accordingly, Campbell's application is denied.

3 Now, the defendant seeks to exclude the proposed
4 expert testimony of Lee Jablin because it's not the "product of
5 reliable principles and methods" employed by architects.

6 While Jablin's opinions in some respects appear
7 speculative, "where a bench trial is, in prospect, resolving
8 Daubert questions at a pretrial stage is generally less
9 efficient than simply hearing the evidence," a very common
10 sense observation by Judge Lynch in *Victoria's Secret Stores*
11 *Brand Management, Inc. v. Sexy Air Concepts, LLC*, 07 Civ. 5804
12 (GEL) 2009, WL 959775 at *6 note 3 (S.D.N.Y. 2009).

13 Accordingly, the defendant Mark Hotel Sponsor LLC's motion is
14 denied.

15 Because it's a bench trial, the Court can take the
16 testimony for whatever it's worth, and it's best evaluated at
17 the end.

18 If the parties wish to make sort opening statement, I
19 will permit it.

20 Are there any other issues that counsel want to raise
21 before we move forward?

22 MR. BRAUN: I guess we should mention, I think we
23 mentioned it, we discussed with your Honor at the pretrial,
24 there will be some witnesses who will be testifying somewhat
25 out of sequence to accommodate them.

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1 THE COURT: It's perfectly fine.

2 So, does the plaintiff, Roberta Campbell, wish to give
3 an opening statement?

4 MR. ALTER: Her counsel does, yes, your Honor.

5 THE COURT: All right, Mr. Alter.

6 MR. ALTER: Before I do that, let me mention two
7 things: One, is we have placed on the witness stand, I believe
8 on the bench as well, and each counsel has just for the
9 convenience of everyone, calendars for April 2009 and May 2009.

10 Does your Honor have one up there? If not, may I hand
11 one up?

12 THE COURT: You may, but I have calendars from the
13 year Gimel, OK, that I keep up at the bench for any trial.

14 MR. ALTER: Your Honor is far more experienced in this
15 than we.

16 The other is I have a demonstrative which is simply a
17 time line. I am going to use it for my opening statement.
18 It's not a piece of evidence. It's not being offered in
19 evidence. I hope your Honor can see it.

20 THE COURT: Well, do you have it on an
21 eight-and-a-half-by-eleven?

22 MR. ALTER: Yes.

23 THE COURT: My vision is pretty good, but it's not
24 that good.

25 MR. ALTER: Then let me hand it up to your Honor, and

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1 I am going to have to stand here to look at this one myself.

2 THE COURT: That's fine.

3 MR. ALTER: Your Honor, this case deals with a suit
4 over return of a down payment for an apartment. The money is
5 right now being held in escrow by the law firm representing
6 defendant, the Kramer Levin law firm.

7 In the fall of 2007, plaintiff begins looking for an
8 apartment in Manhattan. In January of 2008, she and her then
9 husband sign a contract for unit 1402 at The Mark. The
10 purchase price is \$18,750,000, and the amount paid into escrow
11 pursuant to contract, which is the down payment here in issue,
12 is \$4 million plus.

13 According to the offering plan, the anticipated first
14 closing was to be in May 1 of 2008. That didn't happen. Your
15 Honor will hear testimony about attempts to find out what's
16 going on, and very little information is heard.

17 Plaintiff eventually learns that the problem was, or
18 at least a problem was, that defendant didn't have the 7 out of
19 42 contracts at 15 percent that was needed to declare the plan
20 effective. This is through May, through going into the fall of
21 September.

22 In September, Lehman Brothers collapses, the economy
23 nosedives and it becomes even less likely that anything is
24 going to happen.

25 Nonetheless, in February of 2009 the plan is declared

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Opening - Mr. Alter

1 effective. They do have the 7 of the 42 units they need, and a
2 closing is scheduled for March 31. That's the first scheduled
3 closing date.

4 On March 24, the closing date is adjourned by
5 defendant to April 7. That was only one week before the
6 previously scheduled date.

7 On April 2, which is only five days before the
8 previously scheduled date, defendant further adjourns the
9 closing to April 16.

10 On April 10, finally the defendant schedules
11 inspection for April 15.

12 On April 13, defendant is finally issued a temporary
13 certificate of occupancy. That is probably the major, but by
14 no means the only, piece of paper defendant has to produce in
15 order to allow a closing. You will hear testimony about the
16 others.

17 Ms. Campbell, who lives in California, does come in
18 for the inspection. I should mention, incidentally, that she
19 and her then husband have been divorced in between, and his
20 interest has been assigned to her, and she is the sole party
21 with interest in this lawsuit.

22 The inspection takes place, and your Honor will hear
23 quite a bit of testimony about the inspection, but the
24 important points, I will note now, is that the inspection
25 revealed no heat, no air conditioning, no hot water, very

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Opening - Mr. Alter

1 spotty elevator service, no glass enclosures in the showers and
2 a very long punch list of items that remained to be done.

3 April 16 was that scheduled closing date. Closing did
4 not happen at that time. There was a telephone call on that
5 date between the parties, I should say, and you will hear and
6 you will see an email that one of the participants on behalf of
7 defendant to that telephone conversation sent to his boss
8 stating that plaintiff will close if certain stated conditions
9 are fixed.

10 On April 17, that's a Friday, plaintiff indicates to
11 defendants she has concerns about Sponsor's finances and
12 plaintiff returns home to California.

13 On April 20 there are conversations and correspondence
14 between Mr. Cone and Canter. Mr. Cohen is the plaintiff,
15 Ms. Campbell's attorney. Mr. Canter is an attorney at Kramer
16 Levin representing the defendant.

17 On April 21 -- let me get back to April 20. And you
18 will hear that the tone of that conversation correspondence was
19 very negative, and there is what I will call a threat by
20 Mr. Canter to declare Ms. Campbell in default for not having
21 closed on April 16.

22 On April 21 in the morning there is a four-way
23 conversation between Ms. Campbell and her attorney, Mr. Cohen,
24 and an executive representing defendant. His name is
25 Mr. Marton, and his lawyer, Mr. Canter, and you will hear about

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Opening - Mr. Alter

1 that conversation. Later that day there is correspondence.
2 Mr. Cohen writes to Mr. Canter. It is that letter by Mr. Cohen
3 to Mr. Canter that defendant will claim constituted a
4 repudiation of the contract on behalf of Ms. Campbell.

5 I think your Honor will see that not only was it not a
6 repudiation but on the letter of April 23, which Mr. Canter
7 response to that letter, Mr. Canter expressly states that he's
8 not treating it as a repudiation; that the contract continues.
9 And, in fact, in that letter, he adjourns the closing to
10 April 27. That's the fourth possible closing date.

11 On April 24, Mr. Cohen responds asserting his right
12 under the contract for a two-week adjournment, and the closing
13 is there by adjourned from April 27 to May 11.

14 On April 28, Mr. Canter sends a letter to Mr. Cohen,
15 which is not received until the next day, April 29, it's sent
16 by Federal Express, and that letter acknowledges the
17 adjournment of the closing to May 11. It also states that
18 plaintiff may not return to reinspect the apartment.

19 On April 29, Mr. Cohen receives Mr. Canter's letter
20 from the day before, has a conversation with the plaintiff,
21 Ms. Campbell, and plaintiff decides that she is no longer
22 interested in The Mark. She directs Mr. Cohen to apply to the
23 Attorney General's office for return of the down payment, and
24 Mr. Cohen's office begins work on the AG application.

25 May 1 was the defendant's deadline for obtaining one

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Opening - Mr. Alter

1 closing or the plan was dead. They did barely under the wire
2 actually obtain two closings, and they have never had any
3 closings since.

4 May 4, there are two emails from Mr. Wefels, who is
5 the paralegal at Kramer Levin, who deals with this building.
6 The first one says: "When are you coming for an inspection?"
7 The second one four hours later says, "Please disregard the
8 earlier email; you already had your inspection."

9 On May 11 is the last closing date -- I've called it
10 closing date five -- and Mr. Canter sends a notice of default
11 because Ms. Campbell did not close on that date. In that
12 letter he makes no mention of any possibility of Ms. Campbell
13 coming back to return.

14 On May 15, Ms. Campbell already makes an offer on a
15 different unit at 15 Central Park West and a contract is
16 eventually completed by May 21 of that month.

17 On June 22, Mr. Canter's office responds to
18 plaintiff's application to the Attorney General which had been
19 made on May 8. In that letter, signed by an attorney other
20 than Mr. Canter, it is stated that Mr. Canter would have been
21 willing to allow Ms. Campbell to come back for a second
22 inspection. Both Mr. Cohen and Ms. Campbell will tell you that
23 that was the first time that it was suggested to them by anyone
24 that Mr. Canter had reconsidered his position that she was not
25 able to return to inspect, but that offer, as far as plaintiff

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Opening - Mr. Alter

1 is concerned, was too little too late.

2 In November this action was commenced, and then in
3 December the Attorney General on his own motion closed the
4 escrow dispute matter because of the pending litigation.

5 The position of plaintiff is very simple. I don't
6 want to shift from opening statement to a summation, but in two
7 sentences; that she was prepared to close on -- although she
8 wanted to see that the apartment was properly fixed up, but
9 were it fixed up, she was prepared to close until she got the
10 letter of April 29 telling her she could not come back. She
11 did not hear until June that defendant supposedly had changed
12 its mind, and by then it was too little too late.

13 And that, your Honor, is plaintiff's case.

14 THE COURT: Thank you, Mr. Alter.

15 Mr. Braun, do you wish to make an opening statement?

16 MR. BRAUN: Briefly, I would like to. May I use the
17 lecturn?

18 THE COURT: You may.

19 MR. BRAUN: As you know, this is a breach of contract
20 case. So I want to start with the written contract, which I
21 know your Honor is familiar with on the prior motions in the
22 matter.

23 The key provision is 16.3 which provides unequivocally
24 that the purchaser is obligated to close upon the issuance of a
25 temporary or permanent certificate of occupancy of the suite

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Opening - Mr. Braun

1 subject to one possible caveat, which I will discuss in a
2 minute. But to make that obligation even more clear, 16.3 goes
3 on to set forth two "notwithstanding" clauses. The first one
4 says that the purchaser must close when there is a TCO,
5 "notwithstanding any construction items noted on purchaser's
6 inspection statement (as hereinafter defined) remaining for
7 Sponsor to complete and/or correct in accordance with its
8 obligations under the plan," and as Mr. Alter indicated, you
9 are going to hear testimony about the condition of the suite on
10 the date of the inspection which was April 15, '09. Since
11 plaintiff is going to offer, I gather, a significant amount of
12 oral testimony on that point, we are going to be offering
13 testimony as well.

14 But, frankly, our position is that all of the
15 testimony about the condition of the suite on that date is
16 irrelevant because the purchase agreement makes the issuance by
17 the New York City Department of Buildings of the TCO the
18 bright-line determinant of when the suite is in the appropriate
19 condition for a closing to require the purchaser to close.

20 The only purpose of the inspection and the only
21 purpose of the inspection statement that the contract specifies
22 is to come out of the inspection is to create an agreed upon
23 list of those items in the suite that remain incomplete or
24 defective and must be corrected by the Sponsor even after the
25 closing. It's an obligation that expressly survives the

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Opening - Mr. Braun

1 closing. And in the absence of that type of express
2 obligation, the Sponsor's duty to address issues, conditions,
3 defects, could well expire once the purchaser takes title to
4 the unit, but since the contract makes it clear that the items
5 on the list, on the inspection statement survive the closing,
6 that always remains the Sponsor's obligation, and that is the
7 purpose of the inspection.

8 The idea that I heard at earlier stages of the case
9 that somehow a unit, a suite can fail inspection is a false
10 concept that exists nowhere in the contract. It's something
11 that plaintiff has erroneously trying to engraft into the
12 contract.

13 Now, the second notwithstanding clause provides that
14 the purchaser must close upon issuance of a TCO for the suite
15 "notwithstanding the incomplete construction and/or decoration
16 of any other portions of the building not preventing
17 purchaser's occupancy of the suite," and the negative
18 implication of that language is that there conceivably could be
19 a condition of "incomplete construction and/or decoration" of
20 something outside the suite but in the building that prevents
21 purchaser's occupancy of the suite and therefore would excuse
22 the purchaser from closing.

23 We believe that the evidence will show that that
24 situation did not exist in this case. We believe the evidence
25 will show that the fact that ConEdison had not activated gas

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Opening - Mr. Braun

1 service to the building was not a matter of incomplete
2 construction and/or decoration of the portion of the building
3 and did not prevent Ms. Campbell's occupancy. We believe the
4 evidence will show that heat, air conditioning, domestic hot
5 water, could have been made available at the building at any
6 time on or after the date of her inspection, although, of
7 course, she had no intention, the evidence will show, to
8 actually begin living in the unit for months thereafter. And
9 it's also undisputed, and the stipulation acknowledges, that
10 the -- that's in paragraph 54 of the pretrial order -- that the
11 building systems providing heat, air conditioning, domestic hot
12 water, cooking gas were properly constructed and complete as of
13 the date of Ms. Campbell's inspection. It's also agreed that
14 the gas service was activated six days after the inspection.

15 Now, I think that certainly the correspondence
16 indicates, and I think the oral testimony will suggest, that
17 plaintiff was unhappy with the absence of a hotel in the
18 building and the absence of some of the related amenities as of
19 the scheduled closing date.

20 The possibility that those amenities and that the
21 hotel was not being in place as of the time that the purchaser
22 was required to close was clearly was clearly disclosed in the
23 offering plan, and essential amenities, such as security, were
24 available at the time that plaintiff was required to close, and
25 she had in our view no legitimate reason for refusing to close

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Opening - Mr. Braun

1 her purchase and therefore is forfeiting her down payment.

2 Now, everyone knows that the global economy
3 deteriorated terribly between January of '08, when Ms. Campbell
4 and her then husband signed the agreement with my client, and
5 in the spring of '09 when we called upon her to perform. We
6 think the evidence is going to show that Ms. Campbell got very
7 worried about the economic downturn and about the fact that
8 there was no hotel in place at the time of her inspection, and
9 she decided not to close, and she decided to take a chance at
10 losing her down payment.

11 In fact, once the Sponsor, my client, issued closing
12 notices, Ms. Campbell's transactional lawyer tried and tried
13 again and again and again to retrade the party's contract and
14 extract major concessions from the Sponsor that were
15 fundamentally inconsistent with the contract.

16 And while the Sponsor was willing to provide some
17 limited accommodations, it was not willing to fundamentally
18 rewrite the contract as sought by the purchaser here. And we
19 believe the evidence will show that the carping about
20 deficiencies in the unit, alleged deficiencies in the unit, and
21 the situation with heat and hot water, were pretextual and had
22 been blown out of proportion as part of a litigation strategy
23 to justify Ms. Campbell's unwillingness to fulfill contractual
24 obligations.

25 We think the evidence will show that not only is

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Opening - Mr. Braun

1 Ms. Campbell's premise about heat, hot water and the facts
2 surrounding that incorrect, but that the claim that the Sponsor
3 wouldn't allow her to come back for another visit is wrong.

4 You will hear testimony about oral invitations to come
5 back and see that the Sponsor was working hard to address the
6 issues on the inspection statement preclosing, although it was
7 not under an obligation to do so until after closing, but it
8 had people working hard preclosing to address the items on that
9 list, and plaintiff and her lawyer were orally advised of that
10 and urged to have her come back.

11 There is also going to be testimony, I'm sure, about
12 the idea that Ms. Campbell had grounds for insecurity and
13 therefore was entitled to assurances about my client's future
14 performance. I think the evidence is going to demolish that
15 theory too because the circumstances that supposedly gave
16 Ms. Campbell grounds for insecurity are really consistent with
17 the contract and were risks that were expressly disclosed in
18 the offering plan.

19 We believe the evidence will show the plaintiff did
20 not ask for assurances about the Sponsor's future performance
21 of its contractual obligations. Instead, she asked for
22 assurances that the Sponsor would do things that it had no
23 contractual or other legal obligation to do.

24 Even so, we think the evidence will show that this
25 Sponsor provided Ms. Campbell with assurances that were

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Opening - Mr. Braun

1 reasonable and sufficient; and to the extent that she or her
2 lawyer were seeking anything more, they were trying to
3 renegotiate the contract.

4 We think that our client has behaved properly and
5 fulfilled its obligations, and that the plaintiff has not.

6 Thank you, your Honor

7 THE COURT: Thank you, Mr. Braun.

8 Let's turn to the evidence. Mr. Alter, would the
9 plaintiff call her first witness.

10 MR. ALTER: Yes. The plaintiff calls herself Roberta
11 calm as first witnesses.

12 ROBERTA CAMPBELL,

13 called as a witness by the Plaintiff,

14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. ALTER:

17 THE DEPUTY CLERK: Please state your name spell your
18 last name for the record.

19 THE WITNESS: Roberta Campbell, C-A-M-P-B-E-L-L.

20 THE COURT: Ms. Campbell, you may have a seat. Pull
21 your chair up to the microphone.

22 Mr. Alter, you may inquire.

23 MR. ALTER: Thank you, your Honor.

24 Q. Ms. Campbell, are you the plaintiff in this action?

25 A. I am.

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Campbell - Direct

1 Q. Where do you now reside?

2 A. 15 Central Park West in New York.

3 Q. Where did you reside when this action was commenced in
4 2009?

5 A. In California.

6 Q. Do you still own a home in California?

7 A. I do.

8 Q. Where were you born and raised?

9 A. Irvington, New Jersey.

10 Q. Please give us your education and job experience beginning
11 post high school.

12 A. I went to the College of New Jersey and then to Columbia
13 University for my master's. And then I worked in various
14 college administration jobs at Sarah Lawrence and the uptown
15 campus of Colombia, then the main campus of Columbia as a dean.
16 Then my last job there was associate director of the capital
17 campaign at Columbia.

18 Q. When you were a dean, what was your title there?

19 A. Dean of residence.

20 Q. When did you leave Columbia?

21 A. 1981.

22 Q. What have you been doing since?

23 A. I was a full-time mother.

24 MR. ALTER: Your Honor, I would like at this point to
25 read in from page 2 of the joint pretrial order item (iii)

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Campbell - Direct

1 Jurisdiction and Venue.

2 "This action is brought under this Court diversity
3 jurisdiction, 28 U.S.C. 1332. At the commencement of this
4 action, plaintiff Roberta Campbell, was a citizen of
5 California. Defendant Mark Hotel Sponsor LLC the Sponsor was a
6 limited liability company, whose sole member was Mark Member
7 LLC, a limited liability company, none of whose members was a
8 citizen of California or corporation incorporated or with its
9 principal place of business in California, or a resident alien
10 domiciled in California. Sponsor's principal place of business
11 was in the Southern District of New York. The amount in
12 controversy, exclusive of interest and costs, exceeds \$75,000.
13 There is no issue as to subject matter or personal jurisdiction
14 or as to venue."

15 So stipulated?

16 MR. BRAUN: Yes, your Honor.

17 Q. Did there come a time when you decided to look for an
18 apartment in Manhattan?

19 A. Yes.

20 Q. When was that?

21 A. The fall of 2007.

22 Q. Why was that?

23 A. My daughter had applied to college, and we were saying that
24 we'd like to spend more time in New York. My husband was
25 already spending more time in New York, and we would like to

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Campbell - Direct

1 have a place of residence here as well as California.

2 Q. What kind of apartment were you looking for?

3 A. Either brand new or brand -- newly renovated.

4 Q. Any particular location?

5 A. The Upper East Side.

6 Q. Were your planning on moving permanently to New York?

7 A. No.

8 Q. How did you plan to divide your time?

9 A. We weren't sure yet, but we were planning to divide it .

10 Q. How did you go about looking?

11 A. I found a relator, and she found some apartments.

12 Q. Who was that realtor?

13 A. Julia Cahill.

14 Q. How did you get to Julia Cahill?

15 A. I have a friend in California, and her -- who is a realtor
16 and her boss called, I believe, someone from Corcoran, and I
17 believe it was Pam Liebman, and Pam Liebman recommended Julia
18 Cahill.

19 Q. Whom did you understand Ms. Cahill to be?

20 A. A vice-president at Corcoran.

21 Q. Just for the record, Corcoran is a real estate broker?

22 A. Yes.

23 Q. To your knowledge, what was the relationship between
24 Corcoran and The Mark?

25 A. Well, Corcoran Sunshine was the listing agent for The Mark

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Campbell - Direct

1 and Corcoran was my representative, and I think there is a
2 loose association between the two.

3 MR. ALTER: Your Honor, I would like to read in a
4 joint fact 14 thaw is on page 8 of the pretrial order.

5 "Corcoran Sunshine Marketing Group was the Sponsor's
6 selling agent under the offering plan."

7 So stipulated?

8 MR. BRAUN: Yes.

9 Q. Did Ms. Cahill introduce you to some buildings?

10 A. Yes.

11 Q. What buildings did she introduce you to?

12 A. First 995 Fifth Avenue, the Stanhope, and then The Mark.

13 Q. Did you look at the Stanhope?

14 A. Yes.

15 Q. Please tell us your reaction to the Stanhope.

16 A. It was lovely, but the apartments were too large for what I
17 was looking for.

18 Q. She next showed you The Mark, I believe you said?

19 A. Yes.

20 Q. That's the building at issue in this case?

21 A. Yes.

22 MR. ALTER: Your Honor, I would like to read in at
23 this point from page 7 of the pretrial order fact 9.

24 "The Mark Hotel was closed in January 2007 for a
25 complete gut renovation pursuant to which virtually the entire

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Campbell - Direct

1 interior except floor slabs, elevator shafts and fire stairs
2 was demolsihed. The purpose of this project was to convert the
3 building to a luxury cooperative hotel containing transient
4 hotel units and hotel amenities on the lower floors and
5 cooperatively owned suites on the upper floors. Under this
6 plan, the leasehold interest for the cooperatively owned suites
7 was to be transferred by Mark Hotel LLC to the Mark Hotel
8 Owners Corporation, which would be organized as a cooperative
9 apartment corporation."

10 So stipulated?

11 MR. BRAUN: Yes, your Honor.

12 Q. Did you actually see your unit before signing a contract?

13 A. No.

14 Q. What did you see?

15 A. I saw floor plans on a wall in the sales office of The
16 Mark.

17 Q. Did you ever see the model unit?

18 A. I saw a model unit quite awhile after, but it was not the
19 model unit of the apartment that I was buying.

20 Q. Did you ever go up to the 14th floor where the apartment is
21 prior to signing the contract?

22 A. No.

23 Q. Did you eventually enter into a contract to purchase
24 apartment 1402 at The Mark?

25 A. Yes.

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Campbell - Direct

1 Q. You have the exhibit books next to you. I call your
2 attention to the larger of the two. There are three books, but
3 you will be working primarily with two of them. The larger one
4 is the book of defendant exhibits. Please look at exhibit 2 in
5 that and tell me when you've found it.

6 A. I have it.

7 Q. Please look at the signature. Is that the contract you are
8 referring to?

9 A. Yes.

10 Q. Please look at the signature page. It's page 18?

11 A. Yes.

12 Q. You will see it's signed not only by you but also by
13 William B. Campbell. Who is or was William B Campbell?

14 A. He is my former husband.

15 Q. And he was your husband at that time?

16 A. Yes.

17 Q. What happened to his interest in the contract and down
18 payment?

19 A. He relinquished his interest when we got divorced.

20 Q. How much was the purchase price under this contract?

21 A. \$18,750,000.

22 Q. Did you eventually make down payments on the contract?

23 A. Yes.

24 MR. ALTER: Your Honor, I would like to read from fact
25 11 which is the bottom of page 7 of the pretrial order.

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Campbell - Direct

1 "The purchase agreement provided that the purchase
2 price to be paid for Suite 1402 was \$18,750,000. The first
3 deposit on the purchase price for Suite 1402 in the amount of
4 \$2,812,500 was paid to the escrow agent on January 28, 2008 and
5 the additional deposit in the amount of \$1,875,000 was paid to
6 the escrow agent on May 19, 2008. The two deposits
7 (collectively the deposit) totaled \$4,687,500, and, with the
8 interest earned thereon, are being held in escrow by Sponsor's
9 attorneys, the law firm of Kramer Levin, Naftalis and Frankel,
10 LLP.:

11 So stipulated?

12 MR. BRAUN: Yes.

13 Q. Were you represented by counsel in this transaction --

14 A. Yes.

15 Q. Please wait till I finish my question.

16 -- in this transaction of signing the contract?

17 A. Yes.

18 Q. Who was that?

19 A. Richard Cohen.

20 Q. Did you read the contract before signing it?

21 A. No, not thoroughly.

22 Q. Was there eventually a First Amendment to the purchase
23 agreement?

24 A. Yes.

25 Q. I call your attention to Defendant's Exhibit 9.

C6iQcam1

Campbell - Direct

1 MR. ALTER: Incidentally, I realized I'm supposed to
2 offer the contract. I offer the document Defendant's Exhibit
3 2?

4 MR. BRAUN: No objection.

5 THE COURT: All right. Look I will receive Exhibit 2,
6 but subject to redaction of the social security numbers that I
7 see are on the signature page.

8 MR. ALTER: Your Honor, those were redacted on any
9 document that was filed. I don't believe exhibits here have
10 been filed. You're right, clearly we should redact it.

11 THE COURT: It will be redacted.

12 MR. ALTER: That's fine.

13 THE COURT: It's received.

14 (Defendant's Exhibit 2 received in evidence)

15 Q. Is Defendant's Exhibit 9 the first amendment to the
16 purchase agreement about which you just spoke?

17 A. Yes.

18 MR. ALTER: I offer that in evidence.

19 MR. BRAUN: No objection, your Honor.

20 THE COURT: Defendant's Exhibit 9 is received in
21 evidence.

22 (Defendant's Exhibit 9 received in evidence)

23 Q. Did you read that before signing it?

24 A. No.

25 Q. In connection with defendants offering this and other units

C6iQcam1

Campbell - Direct

1 for sale, was there an offering plan?

2 A. Yes.

3 Q. Did you receive a copy before you and Mr. Campbell signed
4 the purchase agreement?

5 A. Yes.

6 Q. That's a separate book in front of you, Defendant's Exhibit
7 3, it's a separate binder. Is that the document you were
8 referring to?

9 A. Yes.

10 MR. ALTER: I offer that in evidence.

11 THE COURT: Defendant's Exhibit 3 is received in
12 evidence.

13 (Defendant's Exhibit 3 received in evidence)

14 Q. Were there amendments to the offering plan which were
15 received by you or by Mr. Cohen?

16 A. Yes.

17 MR. ALTER: Your Honor, I'd offer at this time the
18 first amendment, which is Defendant's Exhibit 7, the second
19 amendment Defendant's Exhibit 10, and third amendment
20 Plaintiff's Exhibit 18.

21 THE COURT: Any objection?

22 MR. BRAUN: I believe you misidentified the last
23 document. I have no objection to the first two, your Honor.

24 MR. ALTER: You are right. I did misidentify
25 Plaintiff's Exhibit 18. Do you have a number on it? Give me

C6iQcam1

Campbell - Direct

1 one second, please.

2 THE COURT: Take your time.

3 MR. HAMERMAN: 139.

4 MR. ALTER: I will accept Mr. Hamerman's kind
5 suggestion that it is Defendant's Exhibit 139.

6 MR. BRAUN: Yes, your Honor, we do not object.

7 THE COURT: So Defendant's Exhibits 7, 10 and 139 are
8 received in evidence.

9 (Defendant's Exhibits 7, 10 and 139 received in
10 evidence)

11 Q. In the next year or so, what contacts did you have with the
12 Sponsor?

13 A. Many.

14 Q. Who did you contact with the Sponsor?

15 A. J. P. Forbes.

16 Q. Who was Mr. Forbes?

17 A. He was the seller, the sales associate.

18 Q. Why were you contacting him?

19 A. Because we wanted to find out any information we could
20 about the project, how it was coming along, whether they were
21 going to offer contracts on May 8 or closings beginning May 8.

22 Q. Did you inquire when the final would be effective?

23 A. Yes.

24 Q. What answer did you receive?

25 A. Very vague and elusive, they weren't sure.

C6iQcam1

Campbell - Direct

1 Q. What about the answer to the previous question I asked
2 about, and your answer. Let me rephrase that. You indicated a
3 moment ago that you called to find out how the construction was
4 doing. Did you get any information on that?

5 A. No.

6 Q. Did you ask when you could anticipate closing?

7 A. Yes.

8 Q. What answer did you receive?

9 A. Very vague.

10 Q. Why did you want to know whether the plan was effective?

11 A. Because I wanted to know that the project was viable, and
12 it was supposed to be effective May 8.

13 Q. How many times did you call between signing the contract
14 and finally being notified that the plan was effective?

15 A. Oh, every couple weeks.

16 Q. Did others also call Mr. Forbes on your behalf, if you
17 know?

18 A. Yes.

19 Q. Who were they?

20 A. Julia Cahill and Paul Gleicher.

21 Q. Who was Paul Gleicher?

22 A. He's the architect.

23 Q. So far as you are aware, did they do any better in
24 eliciting information?

25 A. No.

C6iQcam1

Campbell - Direct

1 MR. BRAUN: Hearsay, your Honor.

2 THE COURT: Sustained.

3 MR. ALTER: Your Honor, this brings up a general
4 subject. There will be an issue in this case as what
5 Ms. Campbell knew and understood because it goes to the
6 question of reasonableness of her demand for financial
7 information.

8 I recognize, as Mr. Braun rightly said, that if I'm
9 offering it for the truth of the statement, it is hearsay, but
10 with respect to Ms. Campbell on the stand --

11 THE COURT: You're everything offering it for her
12 state of mind?

13 MR. ALTER: That is correct.

14 THE COURT: You may proceed.

15 MR. ALTER: I will point out that I will call these
16 people to the stand themselves and get it directly.

17 THE COURT: So the objection is overruled, although I
18 would have sustained it as to form on that question.

19 BY MR. ALTER:

20 Q. Now, you signed the purchase agreement, that's Exhibit
21 Defendant's 2, in January 2008. When were you notified that
22 the plan was effective?

23 A. February 2009.

24 Q. Please look at Defendant's Exhibit 12. Do you have it?

25 A. Yes.

C6iQcam1

Campbell - Direct

1 Q. Is that the notification about which you just testified?

2 A. Yes.

3 MR. ALTER: I offer Defendant's Exhibit 12 in
4 evidence.

5 MR. BRAUN: No objection.

6 THE COURT: Defendant's Exhibit 12 is received in
7 evidence.

8 (Defendant's Exhibit 12 received in evidence)

9 Q. Please look at Plaintiff's Exhibit 1. That's the other
10 book, plaintiff's book. Did you receive this notice at or
11 about the same time?

12 A. Yes.

13 MR. ALTER: I offer this in evidence.

14 MR. BRAUN: No objection.

15 THE COURT: Plaintiff's Exhibit 1 is received.

16 (Plaintiff's Exhibit 1 received in evidence)

17 Q. What was your reaction to these notices?

18 A. I was very pleased that we were finally going to close.

19 Q. Now, please refer to the plan, the offering plan which is
20 that separate book. Please look at page 66 of the plan. Does
21 it state there when it's estimated the first closing will be?

22 A. Yes.

23 Q. What does it say?

24 A. May 2008.

25 Q. You can put that exhibit aside. Please go back to Exhibit

C6iQcam1

Campbell - Direct

1 Defendant's 12 which we just looked at a moment ago. How many
2 units does it say had been contracted for?

3 A. Seven.

4 Q. How does this square with what you were led to believe when
5 you were seeking to purchase?

6 A. I was being pressured to sign the contract because I was
7 told there were at least two or three letters of intent on
8 every single unit that was being offered.

9 Q. Had you originally expressed different interest in a
10 different unit?

11 A. I did.

12 Q. What happened?

13 A. I decided that I wanted to have the unit that had outside
14 space, so it was a different unit.

15 Q. And you asked about that unit?

16 A. Pardon?

17 Q. Did you ask Mr. Forbes about that unit?

18 A. Yes.

19 Q. What was his response?

20 A. That I better -- if I want it, I'd better sign quickly
21 because somebody else was very interested in it as well.

22 Q. What was your impression with respect to the status of
23 sales for the building?

24 A. That there weren't very many.

25 Q. At that time?

C6iQcam1

Campbell - Direct

1 A. Well, at that time I didn't have any information either
2 way. I was taking his word for it.

3 Q. And what did you understand that word to be that he was
4 telling you?

5 A. That there was much demand on the building.

6 Q. Did you subsequently learn that the project wasn't nearly
7 sold out?

8 A. Yes.

9 Q. How did you discover that fact?

10 A. Well, that the offering plan wasn't declared effective
11 until February, and that they only had seven units sold.

12 Q. Did learning about defendant's problem with declaring the
13 plan effective change your intent with regard to closing?

14 A. No.

15 Q. Did it change your level of confidence as to defendant's
16 ability to close?

17 MR. BRAUN: I think it's leading, your Honor.

18 THE COURT: You are leading. I will sustain the
19 objection.

20 MR. ALTER: I will move on.

21 Q. Now, according to Plaintiff's Exhibit 1, which I ask you to
22 look at again, please, when was the closing -- do you got it,
23 plaintiff's 1?

24 A. No, I'm sorry. Yes.

25 Q. That's the document you just looked at?

C6iQcam1

Campbell - Direct

1 A. Mmm-hmm.

2 Q. When was the closing scheduled for?

3 A. March 31, 2009.

4 Q. Did the closing take place on March 31, 2009?

5 A. No.

6 Q. Why not?

7 A. The Sponsor adjourned that date.

8 Q. Did Mr. Cohen try to speed up the process on your behalf to
9 your knowledge?

10 MR. BRAUN: Objection. Hearsay.

11 MR. ALTER: I am just asking yes or no, and then I
12 will move on.

13 THE COURT: Overruled.

14 Q. Did Mr. Cohen try to speed up the process on your behalf to
15 your knowledge?

16 A. Yes.

17 Q. I will deal with that when Mr. Cohen is on the stand.

18 Let me ask you though, did there come a time when you
19 did eventually fly in from California to inspect the unit?

20 A. Yes.

21 Q. I believe you have in front of you calendars for April and
22 May 2009. Please feel prefer free to refer to them as you need
23 or as you like. What was the date of the inspection?

24 A. April 15, 2009.

25 Q. As of April 15, when was the closing scheduled for?

C6iQcam1

Campbell - Direct

1 A. April 16.

2 Q. Coming into the inspection on Wednesday, the 15th, could
3 you have closed on Thursday, the 16th?

4 A. Yes.

5 Q. What about the \$14 million or so you needed to close?

6 A. I could have had it wired.

7 Q. Did you have liquid funds available to you at that time so
8 that you could have wired the money?

9 A. I did.

10 Q. So you're saying that had the inspection gone well on the
11 15th, you would have closed on the 16th?

12 A. Yes.

13 MR. BRAUN: Objection.

14 THE COURT: Sustained.

15 Q. What was your intention on the 15th prior to the inspection
16 on the 15th with respect to closing on the 16th?

17 A. I expected I would close on the 16th.

18 Q. Had you discussed the timing of the closing with Mr. Cohen?

19 A. No.

20 Q. Had you even met Mr. Cohen prior to the inspection?

21 A. No.

22 Q. Immediately prior to the inspection, what was your intent
23 with respect to moving in after the closing?

24 A. We were going to take some time to decorate the apartment
25 and start immediately after the closing.

C6iQcam1

Campbell - Direct

1 Q. What was your plan with respect to actually moving in?

2 A. We were going to use the apartment in the fall of 2009 when
3 my daughter started college.

4 Q. Now, let's talk about the inspection on the 15th you
5 attended?

6 A. Yes.

7 Q. And Mr. Cohen attended, is that correct?

8 A. Yes.

9 Q. Who else attended on your behalf?

10 A. Richard Gray and Larry Ubell and Paul Gleicher.

11 Q. I may be repeating, could you identify Mr. Gleicher?

12 A. He's the architect.

13 Q. Who was Larry Ubell?

14 A. He is a professional inspector.

15 Q. Who is Mr. Richard Gray?

16 A. My significant other.

17 Q. Who attended on behalf of defendant?

18 A. Stuart Marton and Ramon Chicon.

19 MR. ALTER: Your Honor, I would like to read in from
20 pages 11 and 12 of the pretrial order joint fact 40 and 41.

21 "The four representatives who accompanied Ms. Campbell
22 at the inspection were her real estate attorney (Mr. Cohen),
23 her architect (Mr. Gleicher), her home inspector (Lawrence J.
24 Ubell), and a friend (Richard N. Gray) who is a practicing
25 lawyer in New York City, and who expected that he would be

C6iQcam1

Campbell - Direct

1 living in Suite 1402 with Ms. Campbell.

2 "The two Sponsor representatives who attended
3 Ms. Campbell's inspection were Stuart Marton, a business
4 executive employed by Alexico and Richard Chicon."

5 So stipulated?

6 MR. BRAUN: Yes.

7 MR. ALTER: Your Honor, while we haven't had testimony
8 about it, perhaps we can simply stipulate that Alexico is the
9 company which owns the interest in The Mark?

10 MR. BRAUN: That's not -- I'm sorry, that is not
11 accurate. It is not an accurate characterization.

12 MR. ALTER: I will take your characterization,
13 counsel.

14 MR. BRAUN: Alexico is a company that really acts
15 essentially as developer for The Mark renovation project.

16 MR. ALTER: I will stipulate to that. Thank you,
17 Mr. Braun.

18 Q. How long did the inspection last on April 15?

19 A. Several hours.

20 Q. Where did all seven of you meet up?

21 A. Some of us met in the sales office. Some met in the lobby
22 of the hotel. We all con convened in the lobby of the hotel.

23 Q. Please describe the lobby for the Court.

24 A. The lobby was a construction site. There were construction
25 workers all over the lobby. It was dirty. There wasn't a

C6iQcam1

Campbell - Direct

1 check-in desk. It was clearly a construction site.

2 Q. How were the workmen dressed?

3 A. With hard hats, and there was hammering.

4 Q. Could you see whether the restaurant was finished?

5 A. It wasn't.

6 Q. You could see, and it wasn't?

7 A. Yes.

8 Q. How did you get up to the 14th floor?

9 A. By elevator.

10 Q. Please tell us about the elevator.

11 A. Well, it was -- looked like a freight elevator. It was
12 padded to protect the walls.

13 Q. And how was it summoned?

14 A. It was -- there was a construction worker who ran the
15 elevator for us.

16 Q. How did he know to come?

17 A. He must have been asked -- I don't know.

18 Q. Was there a hallway on the 14th floor between the elevator
19 to the entrance of unit 1402?

20 A. Yes.

21 Q. Please describe the hallway to us as you remember.

22 A. It was completely unfinished. Unfinished walls and
23 unfinished flooring.

24 MR. ALTER: Your Honor, I would like to read in from
25 page 13 of the stipulation fact 49.

C6iQcam1

Campbell - Direct

1 "At the outset of the inspection, it was agreed by the
2 participants that Mr. Chicon's list would be limited to items
3 inside Suite 1402, and that building-wide issues, including hot
4 water, would not be included on the list."

5 So stipulated?

6 MR. BRAUN: Yes.

7 Q. Please tell us what you saw when you entered the suite.

8 A. I saw a con -- I saw a construction site; that the suite
9 was clearly not finished, and was very disappointed.

10 Q. Could you give us a little more detail on that, please.

11 A. The floors weren't finished. The walls weren't finished.
12 There weren't any shower stalls. There were no closets. It
13 was dirty. It had been swept but not cleaned. There weren't
14 any guards on the windows. Those were the major beginning
15 things.

16 Q. Well, was -- and then you inspected over a period of hours,
17 I believe you said, is that correct?

18 A. Yes.

19 Q. Were all seven of you together during the inspection?

20 A. No, we entered in and out with different people.

21 Q. Did those who were looking at other things report to you
22 during the inspection as to what they saw?

23 A. Yes.

24 Q. Please look at -- was there a punch list signed at the end
25 of the inspection?

C6iQcam1

Campbell - Direct

1 A. Yes.

2 Q. Who was writing down on the punch list?

3 A. Pardon?

4 Q. Who was it who was writing on the punch list as you recall?

5 A. Ramon Chicon.

6 Q. Please look at Defendant's Exhibit 24 and tell me if that's
7 what you're talking about.

8 A. Yes.

9 MR. ALTER: I offer Defendant's Exhibit 24 in
10 evidence.

11 MR. BRAUN: No objection.

12 THE COURT: Defendant's Exhibit 24 is received in
13 evidence.

14 (Defendant's Exhibit 24 received in evidence)

15 Q. Is the cover sheet numbered 1 of 4, 2 of 4, 3 of 4 and 4 of
16 4. Do you see what I'm referring to?

17 A. Yes.

18 Q. Did you yourself personally notice all the items that were
19 on this punch list?

20 A. No.

21 Q. Let me talk about certain items, and you tell me whether
22 you noticed them yourself or whether you were told about them
23 in the inspection or neither.

24 Let's look at page 1, lines 9 and 10. Floor to be
25 stained and finished as per original specification is this

C6iQcaml

Campbell - Direct

1 something you had noticed

2 A. Yes.

3 (Continued on next page)

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C6IJCAM2

Campbell - direct

1 Q. Let's look at that same page, line 25, install microwave.

2 Did you notice a microwave needed to be installed?

3 A. Yes.

4 Q. Let's look at Item 26 -- line 26, I should say -- supply
5 cooktop grills and burner tops. What is that talking about?

6 A. The cooktop.

7 Q. On the stove?

8 A. Yes.

9 Q. In the kitchen?

10 A. Correct.

11 Q. Did you notice this yourself?

12 A. Yes.

13 Q. Let's turn to the next Page 2 of 4, let's look at -- still
14 in the kitchen, I believe, according to this, yes, Line 15 Page
15 1, we are in the kitchen look at Page 2, Line 3, kitchen
16 sliding door and Line 4, are these items you noticed?

17 A. Not specifically, but I knew it was difficult to get out
18 onto the terrace terrace.

19 Q. Let's look at line 30, the bottom of Page 2. General note,
20 repaint all walls in apartment. Did you notice that?

21 A. Yes.

22 Q. How about remove sprinkler head protection, did you notice
23 that?

24 A. Yes.

25 Q. Let's turn to Page 3, Line 10, you see we are talking about

C6IJCAM2

Campbell - direct

1 master bath a number of items under that heading. Let's talk
2 about 21 and 22, install shower enclosure. Please tell us
3 about that.

4 A. There weren't any shower enclosures in the bathrooms.

5 Q. We are talking about the master bathroom in particular?

6 A. Yes.

7 Q. Is this something you noticed yourself?

8 A. Yes.

9 Q. Install toilet accessories. What does that mean?

10 A. Towel bars and toilet paper holders.

11 Q. Are these missing?

12 A. Yes.

13 Q. Is this something you observed yourself?

14 A. Yes.

15 Q. Let's look a little further down the page, talking about
16 Bath No. 4, line 26. Again it says install shower enclosure.
17 Is this a problem in that bathroom as well?

18 A. Yes.

19 Q. Type of new shower fins. Is that something you noticed?

20 A. Yes, because they were hanging.

21 Q. Let's look at line 29, general note, closets to be supplied
22 and installed. Tell us about that, please.

23 A. The places for the closets were just empty and this
24 clarifies and there was nothing in the closets, no clothing
25 bars or anything.

C6IJCAM2

Campbell - direct

1 Q. Is this something you noticed?

2 A. Yes.

3 Q. Couple of lines below that under general note -- we talked
4 about that.

5 Let's turn to Page 4, hallway, patch and paint. Did
6 you see that?

7 A. Not specifically, but the apartment had to be repainted in
8 its entirety.

9 Q. Let's look at Line 4, Bedroom No. 2, bath. Secure loose
10 shower frames. Is this something you noticed?

11 A. Yes.

12 Q. Bathroom No. 3, line 13, adjust loose shower head. Is this
13 again something you noticed?

14 A. Yes.

15 Q. Line 18, terrace. It speaks about adjusts spacing between
16 pavers, smaller if possible. Please tell us about that.

17 A. In many parts of the terrace, the pavers were spread quite
18 widely apart and there was debris in-between them and any,
19 especially a woman with a wide heel, her heel would go down
20 into that crevice.

21 Q. Let's talk about the heat and air conditioning system. Was
22 it working that day?

23 A. No.

24 Q. Did you test it yourself?

25 A. No.

C6IJCAM2

Campbell - direct

1 Q. How did you know at this time it wasn't working?

2 A. Someone told me.

3 Q. Was there hot water in the suite on that day?

4 A. No.

5 Q. How do you know that?

6 A. Someone told me that.

7 MR. BRAUN: Now we are asking -- look, we stipulated
8 to some of these facts. I don't know the purpose of asking the
9 witness about these things that someone told her.

10 MR. ALTER: Again to show that she knew about it at
11 the time, her state of mind.

12 THE COURT: All right. That could just be put in one
13 summary question.

14 MR. ALTER: I'll move on.

15 BY MR. ALTER:

16 Q. Did you learn during the inspection of an incident when Mr.
17 Ubell were in the elevator?

18 A. Yes.

19 MR. BRAUN: Objection.

20 MR. ALTER: I won't ask about the incident. The
21 incident will come in through Mr. Ubell's testimony. My
22 question to her was did you learn during the inspection of an
23 incident. May I ask that question?

24 THE COURT: You may.

25 BY MR. ALTER:

C6IJCAM2

Campbell - direct

1 Q. I ask it. Did you learn?

2 A. Yes.

3 Q. We'll get from Mr. Ubell what that incident was.

4 What were you feelings about the unit immediately
5 after the inspection?

6 A. I felt it still had the potential to be a terrific unit
7 with light and the spacing, but that it was an unfinished
8 apartment.

9 Q. In your opinion, was it livable at the time?

10 A. No.

11 Q. Why, in your view, was it not livable?

12 A. Because there were no major systems, the apartment was not
13 repainted, there weren't shower stalls, there weren't closets
14 and there were varying other things that were smaller.

15 Q. You said no major systems. What are you referring to?

16 A. Heat, hot water, the elevator wasn't working.

17 Q. Do you have experience with punch lists for construction?

18 A. I do.

19 Q. Please explain how.

20 A. I've had the privilege to own eight homes in my life and
21 five of them were brand new construction.

22 Q. Did you deal with punch lists on those homes?

23 A. I did.

24 Q. How did the punch lists here compare with those?

25 A. I wouldn't call this a pinch list. I would call it a state

C6IJCAM2

Campbell - direct

1 of a project it is so extensive. Punch lists are much smaller
2 and many smaller items than what appears on these lists.

3 Q. Place look at Defendant's Exhibit 63, the bigger book. Is
4 this an e-mail -- well, I point out the date of this is April
5 15th. Is this the same date of the inspection?

6 Is this an e-mail exchange you had with Mr. Gleicher
7 after the inspection. Is that correct?

8 A. Yes.

9 MR. ALTER: I offer it in evidence.

10 MR. BRAUN: No objection.

11 THE COURT: All right. Defendant's Exhibit 63 is
12 received in evidence.

13 (Defendant's Exhibit 63 received in evidence)

14 BY MR. ALTER:

15 Q. Now you have both Mr. Gleicher and Mr. Ubell on your team
16 at the inspection. Is that correct?

17 A. Yes.

18 Q. What were their respective roles.

19 A. Larry Ubell was to go through the apartment with a
20 fine-tooth comb and state every single thing that was not how
21 it should have been.

22 Q. What was Mr. Gleicher's role?

23 A. He was more overview, looking at it for design purposes
24 because he was the person that I was going to work with for
25 interior design.

C6IJCAM2

Campbell - direct

1 Q. Was he looking for defects in the apartment?

2 A. No.

3 Q. Now in this e-mail, Exhibit 63, at the bottom Mr. Gleicher
4 says the apartment is absolutely fabulous.

5 Do you see what he says?

6 A. Yes.

7 Q. In the top e-mail you say, "I definitely feel the same
8 way"?

9 A. Yes.

10 Q. What did you understand him to mean and what did you mean
11 in agreeing with him?

12 A. We were trying to remain hopeful because it would have been
13 a fantastic apartment if it had been finished.

14 Q. Were you expecting the Sponsor to finish the construction
15 at this point in time?

16 A. Yes.

17 Q. Was anything said to you during the inspection by Mr. Mar
18 tone or Mr. Chicon about the closing schedule for the next day?

19 A. No.

20 Q. What was your assumption immediately after the inspection
21 with respect to the closing?

22 A. That I couldn't see closing on this apartment at this time.

23 Q. Did you subsequently have discussions with defendant about
24 the closing?

25 A. Yes.

C6IJCAM2

Campbell - direct

1 Q. Was that by telephone?

2 A. Yes.

3 Q. Who participated in that?

4 A. Mr. Cohen, myself, Jonathan Canter and Mr. Marton.

5 MR. ALTER: Your Honor, I would like to read from
6 Joint Fact 60 and 61 on Page 15.

7 MR. BRAUN: Your Honor, before we do that, I wonder if
8 we could get some clarification as to the witness's
9 understanding as to when this conversation took place because
10 it hasn't been established when the witness thinks this
11 happened and there may be confusion about multiple
12 conversations.

13 MR. ALTER: I am willing to do so that.

14 BY MR. ALTER:

15 Q. This conversation about which I was just asking you, when
16 did this one take place?

17 A. On the 17th, I believe.

18 Q. All right. It was the week of the inspection, correct?

19 A. Right.

20 Q. Not the following week?

21 A. No.

22 MR. ALTER: Let me read now fact 60 and 61.

23 "On April 16th, 2009, a telephone conference call took
24 place in which at least Messrs. Cohen, Canter and Marton
25 participated. So stipulated?

C6IJCAM2

Campbell - direct

1 MR. BRAUN: Yes.

2 BY MR. ALTER:

3 Q. Is this phone call -- I know you claim it as the 17th -- is
4 this phone call we have stipulated to as being the 16th the
5 telephone conference call you're referring to?

6 A. Yes.

7 MR. BRAUN: Objection; leading.

8 A. Sorry.

9 MR. ALTER: I think it is a preliminary question to
10 identify it.

11 THE COURT: Overruled.

12 BY MR. ALTER:

13 Q. And the call says at least these three people participated.
14 Did anyone else participate that you know?

15 A. No.

16 Q. Did you?

17 A. Yes, obviously.

18 Q. Fact 61. On April 16th, 2009, Mr. Marton sent an e-mail to
19 Mr. Senbahar, a copy of this e-mail is exhibit Plaintiff's 43.

20 MR. BRAUN: I stipulated to that, your Honor.

21 MR. ALTER: I offer Exhibit 43 in evidence.

22 MR. BRAUN: No objection.

23 THE COURT: Exhibit 43 is received in evidence.

24 (Plaintiff's Exhibit 43 received in evidence)

25 THE COURT: That is Plaintiff's Exhibit 43.

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Campbell - direct

1 MR. ALTER: Is that Plaintiff's Exhibit 43? Give me a
2 second, your Honor, please.

3 THE COURT: Take your time.

4 (Pause)

5 MR. ALTER: It is Plaintiff's 43. Yes, it is.

6 I am not going to read it out loud because your Honor
7 obviously can read it, but I would call your Honor's attention
8 to the contents of this e-mail which is fairly brief.

9 BY MR. ALTER:

10 Q. Now, during that conversation, was a specific new closing
11 date set?

12 A. No.

13 Q. During that conversation were you asked to stay in New York
14 to close?

15 A. No.

16 Q. Was the tone of the conversation positive or negative, in
17 your view?

18 A. It was positive.

19 Q. Did there come a time when you began to have doubts about
20 the Sponsor's ability to close?

21 A. Yes.

22 Q. When was that?

23 A. Right after the inspection.

24 Q. Why was that?

25 A. Because I was concerned about the project in general and

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Campbell - direct

1 obviously the condition of the apartment, and whether this
2 project was going to be viable at all.

3 Q. Did you have doubts as to their ability to -- well, let me
4 withdraw that.

5 What did you know about the Sponsor's obligations at
6 this point?

7 A. Nothing.

8 Q. Did you know they had a deadline to close?

9 A. Yes.

10 Q. What was that deadline as you understood it?

11 A. May 1st.

12 Q. Did you decide then you did not want to close?

13 A. No.

14 Q. What did you decide?

15 A. I wanted them to fix the apartment and then I would like to
16 see it and close.

17 Q. Let me bring to your attention Defendant's Exhibit 30,
18 which is an e-mail chain.

19 MR. ALTER: Which I will offer in evidence.

20 MR. BRAUN: No objection, your Honor.

21 THE COURT: Defendant's Exhibit 30 is received. In
22 evidence.

23 (Defendant's Exhibit 30 received in evidence)

24 MR. ALTER: I would like to bring your attention to
25 the last e-mail in this chain which is the earliest of the

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Campbell - direct

1 e-mail, of course chains going in reverse chronological order.

2 BY MR. ALTER:

3 Q. Was this an e-mail you sent to Mr. Cohen on the morning of
4 Friday, April 17th?

5 A. Yes.

6 Q. What time of day did you send it?

7 A. 7:11 am.

8 Q. It contains a link to a Washington Post matter?

9 A. Yes.

10 Q. Do you see that?

11 A. Yes.

12 Q. Is that the article Defendant's Exhibit 29?

13 A. Yes.

14 MR. ALTER: I offer Defendant's Exhibit 29 in
15 evidence.

16 MR. BRAUN: Yes, your Honor, I gather it is being
17 offered simply for the fact there was and article that
18 Ms. Campbell saw it. Obviously, we don't object to that. We
19 don't want it admitted necessarily for the matters stated
20 therein.

21 MR. ALTER: Mr. Braun expresses my sentiments as well.

22 THE COURT: Defense Exhibit 29 is received.

23 (Defendant's Exhibit 29 received in evidence)

24 BY MR. ALTER:

25 Q. Did you request Mr. Cohen to send, forward e-mail and the

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Campbell - direct

1 article on to Mr. Marton?

2 A. Yes.

3 Q. Did he? Did he do that through counsel?

4 MR. BRAUN: Excuse me?

5 MR. ALTER: Let me withdraw that.

6 Please look at the bottom e-mail on the first page of
7 Exhibit 30. I think the e-mail speaks for itself. Let me read
8 two sentences:

9 "Please forward the below message and link to Stuart.
10 This is e-mail from Mr. Cohen to Mr. Canter, Stuart being Mr.
11 Marton. Ms. Campbell would like to have a conference call with
12 Stuart regarding this. One more sentence. She is leaving for
13 the airport 1:30 today and is available until then."

14 BY MR. ALTER:

15 Q. Now, did you have that conference call that day?

16 A. No.

17 Q. Did you eventually have it?

18 A. Yes.

19 Q. We'll get to that.

20 Meanwhile, did you leave for California that day, as
21 the e-mail says?

22 A. Yes.

23 Q. Was that the time that you had originally planned to
24 return?

25 A. Yes.

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Campbell - direct

1 Q. When you returned to California, what did you do with
2 regard to the situation with the Mark?

3 A. I was very concerned, and so I began to just look to see if
4 there were any other options. I just felt I had to have some
5 kind of backup plan.

6 Q. By "other options," you were looking at alternative sites
7 to possibly purchase. Is that what you mean?

8 A. Yes.

9 Q. Between the time you signed the purchase agreement and the
10 time of your inspection of the site, which was later, had you
11 at all considered looking for a different site in New York?

12 A. No.

13 MR. ALTER: I would like to read in, your Honor, at
14 this point Fact 56, which is on Page 14 of the order.

15 "Between the execution of the purchase agreement and
16 Ms. Campbell's inspection of Suite 1402 on April 15th, 2009,
17 she had not sought to find any other residence for purchase in
18 New York City."

19 MR. BRAUN: So stipulated.

20 MR. ALTER: Thank you.

21 BY MR. ALTER:

22 Q. What was the relationship between the purchasing the unit
23 at the Mark and your new plan?

24 A. There wasn't a relationship. I still was planning to close
25 on the Mark, but I just wanted to see what else was available

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Campbell - direct

1 just as a backup plan.

2 Q. Did you ever tell defendant you had begun looking for a
3 possible alternative purchase?

4 A. No.

5 Q. So far as you're aware, did the defendant ever learn before
6 this lawsuit began you had started looking as early as the
7 weekend after the inspection?

8 A. No.

9 Q. That weekend after the inspection when you say you began to
10 search online, did you identify some sites you might be
11 interested in?

12 A. Yes.

13 Q. Did you have anyone begin to look at other sites?

14 A. Yes.

15 Q. Who looked for you?

16 A. Richard Gray, Julia Cahill, Richard Cohen and Paul
17 Gleicher.

18 Q. Did all four of them look at every site?

19 A. No.

20 Q. Some of them some, and some the others?

21 A. Correct.

22 Q. Roughly how many sites did you have them look at?

23 A. Four.

24 Q. Prior to the end of April, did you personally look at any
25 other site?

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Campbell - direct

1 A. No.

2 Q. Where were you at the time?

3 A. California.

4 Q. Prior to the end of April, did you make an offer on any
5 other site?

6 A. No.

7 Q. You mentioned earlier you eventually had that conference
8 call with Mr. Marton. When was this?

9 A. The following Tuesday, Tuesday the 21st.

10 Q. Feel free to refer to the calendar, please.

11 On Monday, the 20th, did you learn of substantive
12 communications between Mr. Cohen and Mr. Canter that day other
13 than being willing to set up the conference?

14 A. Yes.

15 Q. You learned that from Mr. Cohen?

16 A. Yes.

17 Q. Without going into the details of your conversations with
18 Mr. Cohen, did you understand the tone of those communications
19 between Mr. Cohen and Mr. Canter to positive or negative?

20 A. Negative.

21 MR. BRAUN: He is asking for hearsay. I object.

22 MR. ALTER: My question was did you understand.

23 THE COURT: It is a Bench trial. Overruled.

24 MR. ALTER: I believe it was answered, so I'll move

25 on.

C6IJCAM2

Campbell - direct

1 BY MR. ALTER:

2 Q. Who else was a party to that conference call on Tuesday
3 morning the 21st?

4 A. Stuart Marton and Jonathan Canter, myself and Richard
5 Cohen.

6 Q. Now, Stuart Marton we have identified. We have mentioned
7 Mr. Canter and hopefully identified him. Who was he?

8 A. He was the sponsor's representative.

9 Q. Mr. Canter?

10 A. Mr. Canter, I am sorry, he was the attorney for the
11 Sponsor.

12 Q. And he is at the Kramer Levin firm?

13 A. Yes.

14 Q. Where were you at the time of this conference call?

15 A. California.

16 Q. How long roughly did the conversation last?

17 A. 15 or 20 minutes.

18 Q. Please tell us about the conversation.

19 A. It was very frustrating, and they couldn't give me a time
20 when the apartment was going to be finished. They kept
21 estimating a few weeks, and also at that time I wanted to have
22 some financial assurances for the project. I asked for
23 financial assurances for the project.

24 Q. What was the response, if any?

25 A. That I wasn't entitled to any.

C6IJCAM2

Campbell - direct

1 Q. Did you express your views as to the condition of the
2 apartment and of the hotel?

3 A. Yes.

4 Q. What response, if any, did you receive from that?

5 A. That it was still going to be corrected.

6 Q. Was there any mention made of whether you should have
7 closed on the 16th?

8 A. Yes.

9 Q. What was said?

10 A. They still felt I should have closed on the 16th.

11 Q. That was stated to you?

12 A. Yes.

13 Q. How was that conversation left, by which I mean was there
14 any agreement as to what would happen next?

15 A. No.

16 Q. What did happen next?

17 A. I assumed they were going ahead and preparing the
18 apartment.

19 Q. Do you know of any exchange between Mr. Canter and Mr.
20 Cohen thereafter?

21 A. Yes.

22 Q. Generally what do you know about that?

23 A. I am not sure I understand.

24 Q. What happened?

25 What happened, if anything, at the proposal date, do

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Campbell - direct

1 you know?

2 A. It was adjourned by the Sponsor and then Mr. Cohen
3 adjourned it further for two weeks.

4 Q. And he had a right to do so under the contract?

5 A. Yes.

6 Q. Were there formal notices of these adjournments?

7 A. Yes.

8 Q. Please look at Plaintiff's 10 and Plaintiff's 14. Are
9 these the notices you're referring to?

10 A. Yes.

11 MR. ALTER: I offer them in evidence.

12 MR. BRAUN: No objection, your Honor.

13 THE COURT: Plaintiff's Exhibit 10 and 14 are received
14 in evidence.

15 (Plaintiff's Exhibits 10 and 14 received in evidence)

16 BY MR. ALTER:

17 Q. For reasons we'll explore in a moment, did you close on May
18 11th?

19 A. No.

20 Q. Did the Sponsor send you a letter as a result?

21 A. Yes. .

22 Q. Let's look at Defendant's Exhibit 46, and tell me if that
23 is what you're talking about?

24 A. Yes.

25 Q. Was that it? You have to answer verbally?

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Campbell - direct

1 A. Pardon?

2 Q. You have to answer verbally.

3 A. I said, "yes."

4 Q. I am sorry. I didn't hear you.

5 What is the date of that letter?

6 A. May 11th, 2009.

7 Q. In that exhibit, Defendant's 46, it speaks of a new
8 deadline of June 12th. Did you close on the unit at the Mark
9 on or before that date?

10 A. No.

11 Q. Did you get another letter from defendant shortly after
12 that date?

13 A. Yes.

14 MR. BRAUN: Excuse me. You didn't offer --

15 MR. ALTER: Mr. Braun reminds me -- and I thank him --
16 I did not offer Defendant's 46 in evidence, and I now do so.

17 MR. BRAUN: No objection.

18 THE COURT: Defendant's Exhibit 46 is received in
19 evidence.

20 (Defendant's Exhibit 46 received in evidence)

21 BY MR. ALTER:

22 Q. We are talking about the letter, subsequent letter which is
23 Plaintiff's Exhibit 34. Is that a letter you received from
24 Mr. Canter on or about the date stated there on?

25 A. 34?

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Campbell - direct

1 Q. Plaintiff's 34?

2 A. Yes.

3 MR. ALTER: I offer Plaintiff's 34 in evidence.

4 MR. BRAUN: No objection.

5 THE COURT: Plaintiff's Exhibit 34 is received in
6 evidence.

7 (Plaintiff's Exhibit 34 received in evidence)

8 BY MR. ALTER:

9 Q. Now we've just looked at some formal notices from defendant
10 to you, all dated after the four-way telephone conversation of
11 April 21st.

12 After that conversation and after commencing of this
13 lawsuit, did you have any other written communications with the
14 Sponsor?

15 A. No.

16 Q. During that same time period after the four-way
17 conversation of April 21st and the commencement of this
18 lawsuit, did you have any telephone or in-person communications
19 with any representative of the Sponsor?

20 A. No.

21 Q. Putting aside those formal notices that we just looked at,
22 how were communications between the two sides handled after the
23 April 21st tone call?

24 A. Through the lawyers.

25 Q. After the phone call of April 21, what was your expectation

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Campbell - direct

1 of what was going to happen at the Mark?

2 A. I really had my concerns and doubt this was ever going to
3 close.

4 Q. Were you still willing to close at the Mark after that
5 conversation on the 21st?

6 A. Yes, yes.

7 Q. Did there come a time you learned the Sponsor was not going
8 to allow you a second visit?

9 A. Yes.

10 Q. When and how did you learn that?

11 A. It was April 29th and I learned it through my attorney, Mr.
12 Cohen.

13 Q. How did Mr. Cohen know?

14 A. From Jonathan Canter.

15 Q. Was that by letter?

16 MR. BRAUN: Objection.

17 A. I believe so.

18 MR. BRAUN: Hearsay.

19 THE COURT: Sustained.

20 MR. ALTER: Let me offer the letter, which may
21 shortcut this. Please look at Plaintiff's Exhibit 13, and I
22 will offer it in evidence.

23 MR. BRAUN: I am sorry. No objection.

24 THE COURT: Plaintiff's Exhibit 13 is received in
25 evidence.

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Campbell - direct

(Plaintiff's Exhibit 13 received in evidence)

BY MR. ALTER:

Q. Now this letter is dated April 28th, and I see it is sent by Federal Express. Did Mr. Cohen call you on April 29th to tell you of this letter?

MR. BRAUN: Objection; leading.

A. Yes.

THE COURT: Overruled.

MR. ALTER: If there is an objection, you have to wait until the Judge rules before you respond.

THE WITNESS: Sorry.

BY MR. ALTER:

Q. Just yes or no, did you discuss the matter with Mr. Cohen?

A. Yes.

MR. ALTER: Now I'd like to call your Honor's attention at this point to one sentence in this letter which is the paragraph numbered 3, which states:

"Thus, having had an opportunity to inspect the suite prior to the duly scheduled closing date and having executed an inspection statement, purchaser has no further rights to inspect the suite prior to closing."?

BY MR. ALTER:

Q. Now, as a result of the conversation you had with Mr. Cohen on his receipt of this April 28th letter, did you make certain decisions?

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Campbell - direct

1 A. Yes.

2 Q. What were they?

3 A. I decided I didn't want to close and I didn't want the
4 apartment.

5 Q. Did you also make any decision with respect to applying to
6 the Attorney General?

7 A. Yes.

8 Q. What was that?

9 A. I authorized Mr. Cohen to apply to the Attorney General to
10 get my deposit back.

11 Q. Prior to learning that you would not be allowed back and
12 you made a decision not to go forward with the purchase of the
13 unit at the Mark?

14 MR. BRAUN: Objection.

15 MR. ALTER: Shall I repeat that?

16 MR. BRAUN: I object to it because it is a leading
17 question. It characterizes a document that is here in front of
18 us.

19 MR. ALTER: I'll rephrase it.

20 BY MR. ALTER:

21 Q. Prior to learning of the April 28th letter, had you made a
22 decision not to go forward with your purchase of the unit at
23 the Mark?

24 A. No.

25 Q. Why did you decide on April 29th to give up on the Mark?

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Campbell - direct

1 A. Because they were asking me to buy an apartment that I
2 couldn't inspect, and the condition of the apartment last time
3 I saw it was was uninhabitable.

4 Q. Now you testified earlier that on April 29th you told Mr.
5 Cohen to proceed with an application to the Attorney General
6 for a refund of your down payment. Is that correct?

7 A. Yes.

8 Q. Prior to that time had you authorized him to proceed on an
9 application to the Attorney General?

10 A. No.

11 Q. Did you tell anyone else on the 29th you no longer were
12 interested in the mark?

13 A. Yes.

14 Q. Whom did you tell?

15 A. Julia Cahill, Richard Gray and Richard Cohen.

16 Q. Did you speak to Mr. Gleicher also?

17 A. Sorry. I meant Paul Gleicher yes.

18 Q. Did you call Paul Gleicher?

19 A. Yes, I did.

20 Q. Did you have an e-mail exchange with him on that date on
21 the subject?

22 A. Yes.

23 MR. ALTER: I ask you to turn, please, to defense's
24 Exhibit 71.

25 BY MR. ALTER:

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Campbell - direct

1 Q. I ask you, is that E the e-mail exchange you're referring
2 to?

3 A. Yes, yes.

4 MR. ALTER: I offer Exhibit 71 in evidence.

5 MR. BRAUN: No objection.

6 THE COURT: Defendant's Exhibit 71 is received in
7 evidence.

8 (Defendant's Exhibit 71 received in evidence)

9 MR. ALTER: Excuse me one second, please.

10 (Off-the-record discussion)

11 BY MR. ALTER:

12 Q. Now, you mentioned that one of the people you had told that
13 you were no longer interested in the Mark was Julia Cahill.

14 What exactly did you tell her?

15 A. I was not interested in the Mark any more, but I was
16 interested in looking at other properties in New York.

17 Q. Did you tell her why you were no longer interested in the
18 Mark?

19 A. Yes.

20 Q. Please tell us what that was.

21 A. For the same reason --

22 MR. BRAUN: Excuse me. I think we have had testimony.
23 I object to the form of the question.

24 MR. ALTER: My question was what she told Ms Cahill.

25 MR. BRAUN: I didn't think that was the question. If

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Campbell - direct

1 that was the --

2 THE COURT: That was the question.

3 BY MR. ALTER:

4 Q. What did you tell Ms. Cahill?

5 A. The apartment, I didn't want it any more. It was
6 unfinished and they wouldn't let me reinspect; and, therefore,
7 I wanted to move on.

8 Q. What did you ask her in that regard?

9 A. To look for other properties in New York.

10 Q. Did she do so?

11 A. Yes.

12 Q. Eventually did you find you a different apartment?

13 A. Yes.

14 Q. Where was that located?

15 A. 15 Central Park West.

16 Q. Did you make an offer on it?

17 A. Yes.

18 Q. Let's look at Defendant's Exhibit 101.

19 MR. ALTER: Let me offer it in evidence is the easiest
20 way.

21 MR. BRAUN: No objection, your Honor.

22 THE COURT: Defendant's Exhibit 101 is received in
23 evidence.

24 (Defendant's Exhibit 101 received in evidence)

25 BY MR. ALTER:

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Campbell - direct

1 Q. At the bottom of that e-mail Ms. Cahill made an offer, and
2 the reference is 15 Central Park West, Apartment 11 B. At the
3 bottom e-mail on Page 1 of that e-mail, she made an offer on
4 your behalf. Is that correct?

5 A. Yes.

6 Q. What was the offer?

7 A. \$16,500,000.

8 Q. What was the date she made that offer?

9 Q. The date of this e-mail?

10 A. May 15th.

11 Q. Was that offer of 16 accepted?

12 A. No.

13 Q. Did you eventually reach a agreement on a different number?

14 A. Yes.

15 Q. What was that number?

16 A. 17,500,000.

17 Q. When was the agreement reached?

18 A. The middle of May.

19 Q. More specifically, if this -- do you have a May calendar in
20 front of you?

21 A. Pardon?

22 Q. Do you have a May calendar in front of you?

23 A. Yes.

24 Q. Ms. Cahill made the offer on Friday, the 15th of May for
25 16,5. You tell us it was rejected. Is that correct?

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Campbell - direct

1 A. I am sorry?

2 Q. Ms. Cahill made the offer for you of 16.5 million --

3 A. Right.

4 Q. -- on May 15th, which you tell us was rejected?

5 A. Correct.

6 Q. Have I correctly stating your testimony?

7 When was the agreed on price of 17,5 reached if you
8 recall?

9 A. I don't recall exactly.

10 Q. In any event, did you come to sign a contract for the
11 Apartment 11 B at 15 Central Park West?

12 A. Yes.

13 Q. Is that Defendant's Exhibit 115?

14 A. Yes, yes.

15 MR. ALTER: I offer it in evidence.

16 MR. BRAUN: No objection.

17 THE COURT: Defendant's Exhibit 115 is received in
18 evidence.

19 (Defendant's Exhibit 115 received in evidence)

20 BY MR. ALTER:

21 Q. Now, you signed this contract in many places, these
22 documents in many places. On only one of them did you actually
23 date it that I can find. That is on the page at the bottom
24 with the plaintiff's production number 1209. Do you see where
25 I am referring to, the disclosures of lead-based paint?

C6IJCAM2

Campbell - direct

1 A. Yes.

2 Q. What date did you sign this document?

3 A. May 20th, '09.

4 Q. You would have signed all the documents on the same day, is
5 that a fair statement?

6 A. Yes.

7 Q. Go back to Page 1 of the contract. When is it dated?

8 A. May 21st.

9 Q. Is that the date you got the contract back from the seller?

10 A. Yes.

11 Q. When did you close on this purchase?

12 A. Sometime in July.

13 Q. Did you move in immediately?

14 A. No.

15 Q. Why not?

16 A. Because we wanted to do some renovations on the apartment.

17 Q. You are living there today?

18 A. Yes.

19 Q. Have you ever personally had any contact with any of the
20 other people who contracted to buy a unit at the Mark?

21 A. No.

22 Q. Or have you ever had contract with any representative of
23 any such person?

24 A. No.

25 Q. Prior to signing the contract for 15 Central Park West,

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Campbell - direct

1 prior did you hear any suggestion from any source whatsoever
2 that defendant might have changed its mind and would allow you
3 back?

4 A. No.

5 Q. Specifically during that time period did Julia Cahill ever
6 say anything to you to that effect?

7 A. No.

8 Q. Did anyone else affiliated with Corcoran say anything to
9 you during that time period to that effect?

10 A. No.

11 Q. Did you have any contact at all with anyone from Corcoran
12 other than Julia Cahill between April 29th and signing of the
13 contract for 15 Central Park West?

14 A. No.

15 Q. Did you have any contact with anyone from defendant during
16 that time period?

17 A. No.

18 Q. After the signing of the contract at 15 Central Park West,
19 did it eventually come to your attention that defendant was
20 claiming it would have allowed you to reinspect after all?

21 A. Yes.

22 Q. How did that come about?

23 A. It was the defendant's response to the petition to the
24 Attorney General.

25 Q. We'll get to that. Let's proceed chronologically here.

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Campbell - direct

1 Did Mr. Cohen submit an application to the Attorney
2 General, seeking return of your down payment?

3 A. Yes.

4 MR. ALTER: I like to offer at this point Defendant's
5 Exhibit 44, which is that application.

6 MR. BRAUN: No objection, your Honor.

7 THE COURT: Defendant's Exhibit 44 is received in
8 evidence.

9 (Defendant's Exhibit 44 received in evidence)

10 MR. ALTER: I would like to read one sentence to the
11 court. This is on Page 3, the bottom paragraph.

12 "Unbelievably and outrageously, especially considering
13 the unfinished condition of the unit and the building on April
14 15, in response to our request to be notified when the unit was
15 completed so Ms. Campbell can return from California to see all
16 hazardous conditions had been cured and the work completed, the
17 Sponsor has taken ludicrous and outrageous position purchaser
18 is not entitled to a final inspection of premises."

19 BY MR. ALTER:

20 Q. Did the Kramer Levin firm ever respond to Mr. Cohen's
21 application?

22 A. I don't know.

23 Q. How did you learn that they were going to let you back?

24 A. Mr. Cohen told me. Sorry.

25 Q. How did he learn it, if you know?

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Campbell - direct

1 A. I don't know.

2 MR. ALTER: Let me offer exhibit Plaintiff's 36, which
3 I will volunteer is the Kramer Levin's firm response to the
4 application to the Attorney General.

5 MR. BRAUN: Are you offering it in evidence?

6 MR. ALTER: Yes.

7 MR. BRAUN: No objection, your Honor.

8 THE COURT: Plaintiff's Exhibit 36 is received.

9 (Plaintiff's Exhibit 36 received in evidence)

10 MR. ALTER: Your Honor, I will just call your
11 attention to one sentence of that on Page 6. The pages are
12 numbered at the top, Page 6 of 7.

13 Numbered Paragraph 6 followed by a paragraph stating
14 Sponsor's response, just reading the last sentence of that
15 paragraph -- before I do that, though, I would point out this
16 letter is signed by an attorney at Kramer Levin other than
17 Mr. Canter. Now I am reading.

18 "Furthermore, Jonathan Canter esquire of this office
19 has spoken with Assistant Attorney General Kenneth DeMario and
20 advised him that Sponsor is willing to permit purchasers to
21 reinspect the suite even though the Sponsor bears no
22 contractual obligation to do so."

23 BY MR. ALTER:

24 Q. Is this what you were referring to before when you
25 testified about the Sponsor's response to the application to

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Campbell - direct

1 the Attorney General?

2 MR. BRAUN: Leading.

3 THE COURT: Sustained.

4 BY MR. ALTER:

5 Q. Prior to your learning about this comment which I have just
6 read in Plaintiff's Exhibit 36, was it ever suggested to you by
7 anyone that Sponsor might have changed its mind about allowing
8 you to view the apartment?

9 A. No.

10 MR. BRAUN: Objection; leading.

11 THE COURT: I didn't hear any objection.

12 MR. BRAUN: Sorry, your Honor, I did say "leading." I
13 guess I mumbled.

14 THE COURT: Overruled.

15 BY MR. ALTER:

16 Q. Let me repeat the question.

17 Prior to your learning about this comment in exhibit
18 Plaintiff's 36 which I have just read, was it ever suggested to
19 you by anyone that Sponsor might have changed its mind about
20 allowing you to view the apartment again?

21 MR. BRAUN: Your Honor, sorry. Where is the
22 foundation? He hasn't established she learned of the comment.

23 THE COURT: I think he did. I will overrule the
24 objection.

25 BY MR. ALTER:

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Campbell - direct

1 Q. May I have an answer please?

2 A. Would you repeat.

3 Q. I'll repeat it once more.

4 Prior to your learning about this comment in exhibit
5 Plaintiff's 36 which I have just read, was it suggested to you
6 by anyone Sponsor might have changed its mind about allowing
7 you to view the apartment again?

8 A. No.

9 Q. Specifically did Julia Cahill ever say anything to you
10 about it?

11 A. No.

12 Q. Did anyone else affiliated with Corcoran ever say anything
13 to you about it?

14 A. No.

15 Q. Did anyone ever say anything to you about it?

16 A. No.

17 Q. Prior to commencement of this lawsuit, was it ever
18 suggested to you by anybody that the Sponsor supposedly was
19 willing to pay for your plane fare from California to come and
20 inspect the unit again?

21 A. No.

22 Q. Incidentally, how much was round trip plane fare from
23 California?

24 A. About \$2,000.

25 Q. First class?

C6IJCAM2

Campbell - direct

1 A. Yes.

2 Q. How much was the sale price of 1402?

3 A. 17 million 500.

4 Q. No. That is --

5 A. 18 million 750,000.

6 Q. At my request, did you compute what percentage of the
7 purchase price a round trip plane fare represented?

8 A. Yes.

9 Q. What was that?

10 A. 100dreth of 1 percent.

11 Q. Have you gotten your down payment back from the Sponsor?

12 A. No.

13 Q. That is what this lawsuit is all about?

14 A. Yes.

15 MR. ALTER: No further questions.

16 THE COURT: All right. Why don't we take a
17 five-minute recess and then we'll proceed with
18 cross-examination. Ms. Campbell, you may step down. You are
19 excused for a few minutes Be careful of any wires. We'll
20 reconvene in a little less than 10 minutes.

21 (Recess)

22 THE COURT: Please be seated. Cross-examination.

23 CROSS EXAMINATION

24 BY MR. BRAUN:

25 Q. Good morning.

C6IJCAM2

Campbell - cross

1 A. Good morning.

2 Q. Can I ask you to take a look again at the document that is
3 in the bigger notebook and is marked as Defendant's 2, that is
4 the purchase agreement.

5 I believe you testified on direct that you did not
6 read that document before you signed it. Is that correct?

7 A. Correct.

8 Q. Did you read any part of it before you signed it?

9 A. I verified the price and then it was the right apartment
10 but not details.

11 Q. But not what? I am sorry?

12 A. Not the details.

13 Q. Those are the only two parts of the agreement you read
14 yourself before you signed it?

15 A. Yes.

16 Q. Well, take a look at Article V which says closing date and
17 place. Did you read that before you signed the agreement?

18 A. No.

19 Q. What about Article X, the plan, did you read that before
20 you signed the agreement?

21 A. No.

22 Q. And Article 16 entitled "Construction," did you read that
23 before you signed the agreement?

24 A. No.

25 Q. What about Article 17 entitled, "Inspection of suite," did

C6IJCAM2

Campbell - cross

1 you read that before you signed the agreement?

2 A. No.

3 Q. And Article XIX entitled, "No representations," did you
4 read that before you signed the agreement?

5 A. No.

6 Q. Did you discuss any of these articles with Mr. Cohen before
7 you signed the agreement?

8 A. Yes.

9 Q. Do you recall just -- I am not going to ask you to tell me
10 what he said, but I want to ask you if you recall which
11 provisions of the agreement you discussed with him before you
12 signed it?

13 A. No, I don't recall.

14 Q. There is also, I would like you to take a look at Schedule
15 D of the purchase agreement which has a Bates stamp number
16 P00038. If you'll notice there is a signature on that page
17 specifically. Is your signature there? I am sorry.

18 I think I may have -- yes, on that page is your
19 signature there on that page?

20 A. Yes.

21 Q. Would you read Item 4 of that schedule out loud, please.

22 A. "Sponsor has made no representations or warranty that the
23 hotel will be or will continue to be owned and operated as a
24 hotel and as described in the plan or as the Mark Hotel or any
25 other hotel brand or that the current hotel operator will

C6IJCAM2

Campbell - cross

1 continue to be the operator of any such hotel."

2 Q. Did you read that page before you signed it?

3 A. No.

4 Q. Did you discuss that page or anything on that page with Mr.
5 Cohen before you signed it?

6 A. I don't remember.

7 Q. Now I'd like you to look at the document that has been
8 admitted into evidence as Defense's 3. It is the one that is
9 in the notebook by itself. It is the offering plan --

10 A. Ah-huh.

11 Q. -- prior to amendments. You received that prior to signing
12 the purchase agreement, correct?

13 A. Yes.

14 Q. Did you read the offering plan prior to signing the
15 purchase agreement?

16 A. No.

17 Q. The purchase agreement?

18 A. No.

19 Q. Did you read any portion of it?

20 A. Not that I recall.

21 Q. Did you discuss any portion of it with Mr. Cohen before you
22 signed the agreement?

23 A. I don't remember.

24 Q. Between the time that you signed the agreement and the time
25 that you had your inspection of Suite 1402, did you read the

C6IJCAM2

Campbell - cross

1 purchase agreement?

2 A. No.

3 Q. What about did you read the offering plan during that time?

4 A. No.

5 Q. Between the time that you had the inspection and the time
6 that you instructed Mr. Cohen to file an application with the
7 Attorney General, did you read any portion of the purchase
8 agreement?

9 A. No.

10 Q. Did you read it during that same period of time, did you
11 read any portion of the offering plan?

12 A. No.

13 Q. By the way, you were referred to Mr. Cohen by Ms. Cahill,
14 the real estate agent. Is that correct?

15 A. Yes.

16 Q. And Mr. Cohen's law firm continues to represent you in this
17 lawsuit. Is that correct?

18 A. Yes.

19 Q. What is the financial arrangement or financial
20 understanding that you have with Mr. Cohen's law firm regarding
21 their compensation for their work on this matter, on this
22 lawsuit?

23 A. That they're paid hourly as a billing.

24 Q. Is Mr. Cohen's law firm's compensation in any way
25 contingent on the outcome of this lawsuit?

C6IJCAM2

Campbell - cross

1 A. No.

2 Q. Do you have any compensation arrangement with Mr. Cohen for
3 his work on this lawsuit that is separate from your arrangement
4 with his law firm?

5 A. No.

6 Q. You also discussed the purchase agreement prior to signing
7 it with Mr. Gray. Is that correct?

8 A. Yes.

9 Q. Did you discuss the offering plan with Mr. Gray prior to
10 signing the purchase agreement?

11 A. I don't recall.

12 Q. Mr. Gray is an attorney. Is that correct?

13 A. Yes.

14 Q. He practices law in New York City?

15 A. Yes.

16 Q. By the way, did you read the purchase agreement for the
17 apartment at 15 Central Park West before you signed it?

18 A. No.

19 Q. I'd like you to look at a document in the defendant's
20 notebook, the big notebook that is Defendant's 6 for
21 identification.

22 A. 6?

23 Q. Yes.

24 A. (Pause)

25 Q. The bottom half of the first page is an e-mail from Mr.

C6IJCAM2

Campbell - cross

1 Cohen. I ask you whether you received that on or about January
2 18th, 2008?

3 A. (Pause)

4 Q. I have asked you whether you received that in January 18,
5 2008?

6 A. Yes.

7 Q. I am talking about the e-mail that is on the bottom half of
8 the first page.

9 A. Yes. I am sorry, yes.

10 Q. Now, the top half of the first page is what appears to be
11 an e-mail from you to Mr. Cohen, with a copy to Ms. Cahill also
12 on January 18th, 2008. I want to ask you whether you sent that
13 e-mail on that particular day?

14 A. Yes.

15 Q. So in that e-mail you wrote, among other things, "I don't
16 see the hotel part of this project will not be finished."

17 That was your view as of January 18, 2008?

18 A. Yes.

19 Q. Was it also your view as of that date that you were "not in
20 a rush to move in, et cetera, so if it is delayed, I don't have
21 a problem"?

22 A. Yes.

23 Q. Did you also write, was it also your view as of January
24 18th, 2008 that, "Succinctly, I think there is minimal
25 probability that the project will not be completed and I am

C6IJCAM2

Campbell - cross

1 willing to take that chance".

2 Was that your view on January 18th, 2008?

3 A. Yes.

4 MR. BRAUN: I ask Defendant's 6 be received in
5 evidence.

6 MR. ALTER: No objection.

7 THE COURT: Defendant's Exhibit 6 is received in
8 evidence.

9 (Defendant's Exhibit 6 received in evidence)

10 BY MR. BRAUN:

11 Q. January 18th, 2008 is the same day you signed the purchase
12 agreement. Is that not correct?

13 A. Yes.

14 Q. It is correct, isn't it?

15 A. Yes.

16 Q. So when you signed that agreement, you knew that you were
17 taking on a risk regarding completion of the project, correct?

18 A. Yes.

19 Q. Now, the period that elapsed between when you signed the
20 purchase agreement in January of '08 and when you arrived in
21 New York for the inspection is about 14 or 15 months, correct?

22 A. Yes.

23 Q. A lot happened in that time, correct?

24 A. Yes.

25 Q. Well, you and your husband divorced, correct?

C6IJCAM2

Campbell - cross

1 A. Correct.

2 Q. And global economic conditions changed dramatically for the
3 worst. Is that correct?

4 A. Yes.

5 Q. Real estate values generally declined as well, correct?

6 A. Yes.

7 Q. In the early part of 2009 after the Sponsor sent notice of
8 a closing date, Mr. Cohen tried to renegotiate the purchase
9 price in your favor, correct?

10 A. Yes.

11 Q. He did that with your knowledge?

12 A. I don't remember.

13 Q. You don't remember whether he did it with your knowledge?

14 A. I can't imagine he didn't.

15 Q. He did it with your approval, the same answer?

16 A. Yes.

17 Q. Are you aware of the fact that when Mr. Cohen was
18 negotiating the purchase agreement on your behalf in 2008, he
19 successfully negotiated for the inclusion in the purchase
20 agreement of a right by you to adjourn the closing date for up
21 to two weeks?

22 A. Yes.

23 Q. Are you aware that he justified that request to the
24 Sponsor's attorney on the ground it was needed to allow you to
25 travel conveniently to New York from California or wherever

C6IJCAM2

Campbell - cross

1 else you might be at the time?

2 A. Yes.

3 Q. Now, you're aware of the fact, aren't you, that up until
4 April 24, 2009 Mr. Cohen did not exercise that right, correct?

5 A. I don't recall.

6 Q. You talked about this four-way conversation that took place
7 on Tuesday, April 21, 2009. You remember that, correct?

8 A. Yes.

9 Q. As of that time Mr. Cohen had never exercised your right to
10 have a two-week adjournment of the closing. Is that correct?

11 A. I am not positive. No, he never asked for an adjournment.

12 Q. Now, you indicated on direct examination that as of the
13 Spring of '09, you were aware that the Sponsor had a deadline
14 requiring that it close at least one sale by a certain date.

15 Is that correct?

16 A. Yes.

17 Q. What was your understanding of the date or the deadline?

18 A. May 1st.

19 Q. So isn't one of the reasons that Mr. Cohen did not invoke
20 your right to a two-week adjournment until after that April 21
21 phone call, that he wanted to delay it, delay the closing, I
22 should say, until after May 1?

23 MR. ALTER: Objection.

24 THE COURT: If she knows, she can answer, but it is
25 overruled.

C6IJCAM2

Campbell - cross

1 A. No.

2 BY MR. BRAUN:

3 Q. That was not a reason?

4 A. No.

5 Q. Any reason?

6 A. No.

7 Q. You weren't hoping to use the possibility of a post-May 1
8 closing date to get leverage over the Sponsor in some fashion?

9 A. Absolutely not.

10 Q. If Mr. Cohen was trying to do that, you don't know that was
11 his thinking. Is that what you're saying?

12 A. He wasn't trying to do that.

13 Q. Well, did he tell you he wasn't trying to do that?

14 A. No.

15 Q. As of the Spring of '09 did you have an understanding as to
16 whether there was a relationship between the issuance of the
17 certificate of occupancy for the suite and the Sponsor's right
18 to schedule a closing?

19 A. Yes.

20 Q. What was that understanding?

21 A. That if you have a certificate of occupancy, you have the
22 right to close or ask the person to close.

23 Q. Ask or require?

24 A. Require.

25 Q. And when you say "you," you meant the Sponsor, correct?

C6IJCAM2

Campbell - cross

1 A. Yes.

2 Q. You said you have --

3 A. One has, or the Sponsor has.

4 Q. The Sponsor you're referring to, correct?

5 A. Yes.

6 Q. As of the Spring of '09, did you have an understanding as
7 to whether it was common in the New York City real estate
8 development area to finish floors of a multistory building on a
9 rolling basis, get certificates of occupancy for those floors
10 on a rolling basis and cause those buildings to be occupied on
11 a rolling basis?

12 MR. ALTER: I don't understand the question, but I
13 have no problem with the witness answering it if she
14 understands.

15 THE WITNESS: No, I had no knowledge of that.

16 BY MR. BRAUN:

17 Q. Did you have an understanding as of the Spring of '09 as to
18 whether the Sponsor could be entitled to require some unit
19 owners to close their purchases before the entire project was
20 completed or substantially complete?

21 A. Yes.

22 Q. What was your understanding?

23 A. That given within reason, the Sponsor could require you to
24 close if the apartment wasn't completely finished.

25 Q. You said the apartment wasn't completely finished.

C6IJCAM2

Campbell - cross

1 Are you talking about your apartment or somebody
2 else's apartment?

3 A. My apartment.

4 Q. Did you have an understanding that as to whether the
5 Sponsor could require you to close your purchase before other
6 apartments in the building were complete and ready for
7 occupancy?

8 A. Yes, I was aware of that.

9 Q. The Sponsor could do that?

10 A. Correct.

11 Q. Did you have an understanding at that time whether the
12 Sponsor had the right to start to require unit purchasers to
13 close their purchases before the hotel was opened?

14 A. Yes.

15 Q. What was your understanding?

16 A. That parts of the hotel or some parts of services could be
17 not finished and you would be required to close.

18 Q. Now, eventually a closing was scheduled for April 16, '09,
19 with the inspection scheduled for the day before. Is that
20 correct?

21 A. Yes.

22 Q. Do you have any awareness that even before the April 15
23 inspection Mr. Cohen had advised Sponsor's counsel that you
24 would not be closing on the day after the inspection?

25 A. I don't recall.

C6IJCAM2

Campbell - cross

1 Q. You don't recall whether he did that or not?

2 A. No.

3 Q. Let me ask you to take a look at the document in the
4 smaller notebook, plaintiff's notebook, as Plaintiff's 18.

5 That document contains a number of e-mails, and I
6 would like you to look at the one that is on the page P00607.

7 MR. BRAUN: By the way, your Honor, I would say that
8 over the course of discovery, plaintiff's counsel and we have
9 had conversations to try to figure out why the sequencing of
10 the Bates numbers is not consecutive. It is fair to say we
11 just don't know. Is that correct?

12 MR. ALTER: I'll stipulate to that.

13 MR. BRAUN: We believe we have reconstructed it
14 reasonably.

15 BY MR. BRAUN:

16 Q. I want to direct your attention, Ms. Campbell, to an e-mail
17 that occupies, or I should say begins at the bottom half of the
18 page marked P00607, and you'll see it is an e-mail from Richard
19 Cohen to our paralegal, Michael Wefels.

20 A. Ah-huh.

21 Q. Did you see that e-mail on or about April 14th?

22 A. I don't recall.

23 Q. In Paragraph No. 2, the e-mail says:

24 "I have previously told you on numerous occasions that
25 we have not agreed to close on April 16th, so I don't know why

C6IJCAM2

Campbell - cross

1 you are putting that date on your closing checklist. We are
2 entitled to 10 days' adjournment, and additionally the proof as
3 required above in Paragraph 1 as a closing condition, that must
4 be satisfied prior to closing pursuant to the First Amendment
5 of the contract."

6 Does this in any way refresh your recollection Mr.
7 Cohen had advised Sponsor's counsel prior to the closing --
8 sorry -- prior to the inspection that there would not be a
9 closing on the day after the inspection?

10 A. I am sorry. I don't recall.

11 MR. BRAUN: Since the parties have stipulated to this
12 e-mail chain, I do ask that it be received in evidence, your
13 Honor, Plaintiff's 18.

14 MR. ALTER: No objection.

15 THE COURT: Plaintiff's Exhibit 18 is received in
16 evidence.

17 (Plaintiff's Exhibit 18 received in evidence)

18 BY MR. BRAUN:

19 Q. Turning to the other notebook, would you please look at
20 Defendant's 62. Now I want you to please take a look at the
21 e-mail that is on the top of the first page. It appears to be
22 from you to Mr. Cohen, with a copy of to Mr. Gleicher. Did you
23 send an e-mail to Mr. Cohen on or about April 10, 2009?

24 A. It seems so, yes.

25 Q. Do you remember the e-mail?

C6IJCAM2

Campbell - cross

1 A. No.

2 Q. Does this e-mail in any way refresh your recollection that,
3 in fact, prior to the inspection you were planning to not close
4 but to handle the closing on some subsequent trip to New York?

5 A. My recollection was I was planning to close as close to the
6 inspection as possible.

7 Q. But were you planning to go back to California before you
8 actually closed?

9 A. No.

10 Q. Do you have any recollection of why in your e-mail here you
11 would tell Mr. Cohen -- sorry -- talk to Mr. Cohen about
12 arranging to make an additional trip?

13 A. No.

14 MR. BRAUN: I ask Exhibit 62 be received in evidence.

15 MR. ALTER: No objection.

16 THE COURT: Exhibit 62 is received in evidence.

17 (Defendant's Exhibit 62 received in evidence)

18 MR. ALTER: That is Defense's 62, I believe, your
19 Honor.

20 THE COURT: Yes, Defendant's Exhibit 62.

21 BY MR. BRAUN:

22 Q. In any event, when you came to New York for the inspection,
23 you knew that you were not going to be moving into the
24 apartment for some period of time, a period of months. Is that
25 correct?

C6IJCAM2

Campbell - cross

1 A. Right.

2 Q. It was tied to your daughter's starting college in New York
3 in the fall of '09?

4 A. Well, it was tied also to also having the interior design
5 completed.

6 Q. In other words, between the time that you closed the
7 purchase and the time you moved in, there would be work that
8 you would have done in the apartment, correct?

9 A. No. There would be interior design items bought. We
10 weren't planning to do any subsequent work in the apartment.
11 It was supposed to have been done at the closing.

12 Q. Well, you say you weren't planning to do any substantive
13 work in the apartment?

14 In fact, the Sponsor had agreed to reconfigure the
15 apartment to fit your wishes, correct?

16 (Pause)

17 MR. BRAUN: There is a question pending. I wonder if
18 I can have an answer to it. Do you need the question reread?

19 THE COURT: Why don't you put the question to the
20 witness again.

21 BY MR. BRAUN:

22 Q. You said you were not planning to do substantive work in
23 the apartment. Isn't it a fact that the Sponsor had agreed to
24 reconfigure the apartment to fit your specifications to some
25 degree. Isn't that correct?

C6IJCAM2

Campbell - cross

1 A. Yes, before the closing.

2 Q. Before the closing the Sponsor had agreed to break up
3 certain rooms to create one large great room. Is that correct?

4 A. Yes.

5 Q. In fact, when you arrived for the inspection, the Sponsor
6 had done that, correct?

7 A. Yes.

8 Q. As of the time that you appeared for your inspection, had
9 you decided on the furniture you were going to have in that
10 apartment?

11 A. Well, we had a furniture plan and we were going to look at
12 actual items.

13 Q. You were still in the stage of shopping for furniture?

14 A. Definitely.

15 Q. Had you selected carpeting at all?

16 A. No.

17 Q. As part of your work on the apartment after you took
18 ownership of the apartment, you were going to install
19 electrical floor outlets, weren't you?

20 A. Yes.

21 Q. That required surgery on the floors, didn't it?

22 A. Yes.

23 Q. Do you have a recollection that you also planned to replace
24 the gas cooktop with an electric induction cooker?

25 A. Yes.

C6IJCAM2

Campbell - cross

1 Q. That is not something that the Sponsor agreed to do for
2 you. Is that correct?

3 A. I don't recall.

4 Q. Well, do you recall that someone on your behalf asked the
5 Sponsor to replace the electric -- sorry -- the gas cooktop
6 with an electric cooktop?

7 A. I don't recall exactly, but I know I wanted to replace it,
8 yes.

9 Q. Do you recall that the Sponsor would not agree to replace
10 it?

11 A. I don't recall.

12 Q. Prior to your inspection of the suite at the Mark Hotel,
13 had you thought about whether you were going to paint or
14 wallpaper any of the walls in the suite?

15 A. No, we hadn't made any final decision.

16 Q. Do you have any recollection of trying to negotiate or
17 someone on your behalf, I should say, trying to negotiate with
18 the Sponsor, for the Sponsor to customize the paint
19 applications in the suite?

20 A. I don't recall.

21 Q. You don't recall whether Sponsor refused to agree to that
22 request?

23 A. No.

24 Q. Correct?

25 A. Uh-huh.

C6IJCAM2

Campbell - cross

1 Q. Were you planning to have basic, flat white paint on every
2 wall in this apartment?

3 A. I don't recall exactly. I wanted the apartment paint-ready
4 and however that is done.

5 (Continued on next page)

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C6iQcam3

Campbell - Cross

1 Q. Paint-ready meaning ready for you to come in and apply
2 whatever paint colors you selected, is that correct?

3 A. Yes, but I wanted a complete apartment and paint --

4 Q. I understand that. I'm entitled to a yes or no answer.

5 A. OK.

6 Q. Is your current apartment painted all one color?

7 A. No.

8 Q. Different rooms are different colors?

9 A. Yes.

10 Q. Do you have wallpaper on any of the rooms in your current
11 apartment?

12 A. Yes.

13 Q. Were you going to put wallpaper on any of the rooms in The
14 Mark Hotel apartment?

15 A. Probably.

16 Q. As of the time of the inspection, had you engaged any
17 contractors to do the electrical or other work on the floors
18 that you had planned?

19 A. I wouldn't have, but my architect might.

20 Q. So you don't know whether your architect had engaged any
21 contractors on your behalf, is that what you're saying?

22 A. As of that time, no.

23 Q. Do you know whether your architect had solicited any bids
24 from contractors?

25 A. I don't know.

C6iQcam3

Campbell - Cross

1 Q. Do you know whether your architect had spoken to or
2 interviewed any contractors?

3 A. I don't know.

4 Q. But in no way had you closed on April 16, 2009 were you
5 going to move in on that day, correct?

6 A. Correct.

7 Q. I wonder if I could ask you in this smaller notebook to
8 take a look at plaintiff's 141.

9 MR. BRAUN: Your Honor, I am reminded by counsel that
10 I may not have offered Defendant's 62 in evidence. I would
11 like to do that.

12 THE COURT: Any objection?

13 MR. ALTER: None, your Honor.

14 THE COURT: All right. Defendant's Exhibit 62 is
15 received in evidence.

16 (Defendant's Exhibit 62 received in evidence)

17 Q. I'm sorry, let me proceed then with 141. You see that on
18 the bottom of the first page, there is an email from Mr. Cohen
19 to Ms. Campbell with copies. It continues on to the next page.
20 On the beginning of the second page, the email as printed out
21 here says, "Then I will send to my client, and she will look
22 into flight arrangements to get here for an inspection and
23 close perhaps a few days later depending on how the inspection
24 goes (that is, if it is just punch list items or anything major
25 that was not completed)."

C6iQcam3

Campbell - Cross

1 Do you remember seeing that email that you were copied
2 on?

3 A. No.

4 Q. You don't dispute that you received the email, correct?

5 A. No.

6 MR. BRAUN: I would like to ask that Plaintiff's 141
7 be received in evidence?

8 MR. ALTER: No objection.

9 THE COURT: Plaintiff's Exhibit 141 is received.

10 (Plaintiff's Exhibit 141 received in evidence)

11 Q. Now, I want to talk to you about the inspection itself.
12 Did you have an understanding as to whether anyone was living
13 in the building on the day of the inspection?

14 A. Not for sure.

15 Q. You didn't know one way or the other whether anyone was
16 living in the building?

17 A. No.

18 Q. During the course of the inspection, did anyone say -- I'm
19 sorry -- did any representative of Sponsor say that no one was
20 living in the building?

21 A. No.

22 Q. Did any of the people who were there on your behalf mention
23 in your presence that no one was living in the building?

24 A. No.

25 Q. You said there were workmen in the lobby when you were

C6iQcam3

Campbell - Cross

1 there?

2 A. Yes.

3 Q. They were wearing hard hats?

4 A. Yes.

5 Q. Where exactly -- were they actually working or passing
6 through?

7 A. No, they were working because it was completely unfinished.

8 Q. Well, did you notice the condition of the floors? Was
9 there flooring installed in the lobby?

10 A. I don't know because it was covered by a protective
11 covering.

12 Q. In terms of the walls, were they -- did you notice if they
13 were Sheetrocked?

14 A. Yes, they were Sheetrocked.

15 Q. They were closed, correct? I mean, they had been installed
16 and were closed off, correct? They had been Sheetrocked?

17 A. I'm not positive.

18 Q. Do you remember whether there were wall sconces in the
19 lobby?

20 A. No.

21 Q. You don't --

22 A. I don't recall.

23 Q. You don't remember whether there was light in the lobby?

24 A. There was light in the lobby, but I don't know that it was
25 from the sconces.

C6iQcam3

Campbell - Cross

1 Q. Do you remember whether the ceiling had been finished?

2 A. No.

3 Q. Do you remember one way or the other?

4 A. No.

5 Q. I think you testified on direct about the restaurant. Is
6 the restaurant part of the lobby?

7 A. No.

8 Q. It's closed off, isn't it?

9 A. Mmm-hmm.

10 Q. You have to say yes or no.

11 A. I'm sorry, yes.

12 Q. And there's a door that separates the lobby from the
13 restaurant, correct?

14 A. Yes.

15 Q. What about the bar area, is that closed off from the lobby?

16 A. Yes.

17 Q. Then you went into the elevators -- I'm sorry -- into an
18 elevator?

19 A. Yes.

20 Q. Did the elevator function all right?

21 A. Yes, but it wasn't an automatic elevator. It functioned --

22 Q. In other words, you can't push a button and summon the
23 elevator to you, is that what you're saying?

24 A. Correct.

25 Q. Someone was operating the elevator, is that correct?

C6iQcam3

Campbell - Cross

1 A. Correct.

2 Q. Do you know whether -- do you know what's entailed in
3 changing an elevator or that elevator from an operation where
4 it has to be -- requires a person to operate it to a situation
5 where it can be summoned by push button?

6 A. No.

7 Q. That particular elevator, the doors opened smoothly when
8 the elevator was there?

9 A. Yes.

10 Q. They closed properly?

11 A. Yes.

12 Q. The elevator went up to the 14th floor without any kind of
13 jerky or other strange movement?

14 A. Yes.

15 Q. And at the end of the inspection, it went back down
16 smoothly?

17 A. Yes.

18 Q. Can you take a look again at Defendant's 3, which is the
19 offering plan. Would you take a look at the page that has the
20 stamp number in the lower right-hand corner of Sponsor 00037?
21 In the middle of the first full paragraph, there's a sentence
22 there reads, "However, it is anticipated that at all times
23 after the first closing, subject to hotel occupancy, industry
24 practice and other similar factors, the lobby will be attended
25 24 hours per day, seven days per week, and there will be at

C6iQcam3

Campbell - Cross

1 least one elevator servicing every floor on which there are
2 occupied suites."

3 Were you aware of that language in the offering plan
4 at the time of the inspection?

5 A. No, not specifically, but there couldn't have been --

6 Q. Mr. Alter will ask you on redirect. Staying with the same
7 page, looking at the next paragraph, there is language that
8 begins -- and I want to direct your attention to it -- "During
9 at least the first year of operation, construction workers and
10 related personnel of Sponsor and hotel owner and others will be
11 at the property from time to time performing construction work,
12 making adjustments and performing various other tasks relating
13 to the completion of construction, fitting out of and moving
14 into the suites and other portions of the building."

15 Were you aware of that language at the time of your
16 inspection?

17 A. No.

18 Q. It goes on to say, "Elevators and personnel may be taken
19 out of service in order to facilitate construction, and
20 exterior hoists may be in place during at least the first year
21 following the first closing and from time to time thereafter as
22 needed in connection with construction being performed in
23 suites."

24 Were you aware of that language?

25 A. No.

C6iQcam3

Campbell - Cross

1 Q. Then the next sentence of this document and this paragraph
2 states, "Sponsor may not fully complete the decoration or
3 finishing of the corridors and other portions of the coop
4 property and the hotel owner may not fully complete the
5 decoration or finishing of the lobby, fitness center,
6 corridors, elevator finishes and other portions of the
7 building, including, but not limited to, including light
8 fixtures, painting, hanging wall coverings or laying carpeting
9 until that particular floor is fully occupied or if additional
10 construction within an area within the building is anticipated
11 for some period thereafter."

12 Were you aware of that language at the time of the
13 inspection?

14 A. No.

15 Q. I believe you said on your direct that when you got into
16 the suite itself, the great room was a construction site. Were
17 there any construction workers there?

18 A. No.

19 Q. Were was there any construction equipment there?

20 A. No.

21 Q. Construction materials?

22 A. I don't recall.

23 Q. Debris?

24 A. Yes.

25 Q. What type of debris?

C6iQcam3

Campbell - Cross

1 A. Maybe not in the great room, no.

2 Q. Not in the great room?

3 A. Not in the great room, but there was --

4 Q. Were the walls painted in the great room?

5 A. Very roughly, certainly not finished.

6 Q. And were the ceilings painted?

7 A. I don't recall.

8 Q. Can you take a look at Defendant's 24, which is the
9 inspection statement. Can you identify any item in there that
10 in your view made the great room a construction site?

11 A. Well, the kitchen is considered --

12 Q. I didn't ask you about the kitchen. I asked you about the
13 great room.

14 A. I was going to say it's considered part of the great room.

15 Q. Well, it is by you.

16 A. OK.

17 Q. So you would point to things in the kitchen, but is there
18 anything -- is there anything in the great room other than the
19 kitchen that you view as making the great room a construction
20 site?

21 A. No, other than it was unfinished.

22 Q. Let me ask you to look in the same notebook at Defendant's
23 74 for identification, and I will represent to you that these
24 are -- the parties have stipulated that these are photographs
25 that were taken by Mr. Gleicher, your architect/designer,

C6iQcam3

Campbell - Cross

1 during the inspection on April 15, 2009, and in fact I ask that
2 they be received in evidence.

3 MR. ALTER: No objection to them being received in
4 evidence.

5 THE COURT: Defendant's Exhibit 74 is received in
6 evidence.

7 (Defendant's Exhibit 74 received in evidence)

8 Q. If you would look at the first photograph there,
9 Ms. Campbell, can you identify what that is?

10 A. It's part of the great room.

11 Q. Is there anything there that in your view makes it a
12 construction site?

13 A. None in this picture.

14 Q. I understand. In this picture. Nothing in this picture.

15 Can you identify the next photograph which has two
16 windows toward the right and a window toward the left. Can you
17 identify what that is a picture of?

18 A. Part of the great room.

19 Q. Is there anything in that photograph that indicates that
20 it's a construction site?

21 A. No.

22 Q. Now, the next photograph is of a doorway leading out on to
23 the terrace, correct?

24 A. Yes.

25 Q. Do you recall where that doorway is?

C6iQcam3

Campbell - Cross

1 A. No.

2 Q. Now, the picture after that is also from the great room
3 looking into the kitchen, is that correct?

4 A. Yes.

5 Q. Is there anything in that photograph that shows that the
6 great room was a construction site?

7 A. No.

8 Q. Please turn to the next picture. That is also the great
9 room, isn't it?

10 A. Yes.

11 Q. Looking up to the entrance into the apartment?

12 A. Mmm-hmm.

13 Q. In other words, there's a dark doorway. That's the door
14 from the hall into the unit, is that correct?

15 A. Yes.

16 Q. Is there anything in that photograph that indicates that
17 the great room was a construction site?

18 A. No.

19 Q. Please turn to the next picture. And can you tell us what
20 that is a photograph of?

21 A. The great room.

22 Q. Is there anything in that photograph that shows the great
23 room -- why the great room is a construction site or was one, I
24 should say, on that day?

25 A. No.

C6iQcam3

Campbell - Cross

1 Q. Please turn to the next one, which is photograph
2 essentially of two windows. Can you identify where they are?

3 A. No.

4 Q. Is there anything in that photograph that shows this
5 particular portion of the apartment to be a construction site?

6 A. No.

7 Q. Turn to the following photograph. Can you tell us what
8 that's a picture of?

9 A. It looks like part of the great room.

10 Q. Is there anything in that photograph that shows the room to
11 be a construction site?

12 A. No.

13 Q. Please turn to the picture after that and tell us, if you
14 can, what it's a picture of? What part of the apartment, I
15 should say.

16 A. I don't know.

17 Q. I'm sorry, I didn't hear you.

18 A. I don't know.

19 Q. Is there anything in this photograph that shows the
20 apartment to be a construction site?

21 A. No.

22 Q. Now, if you look at the same photograph, the very lower
23 left-hand corner of the photograph, it looks like there might
24 be a little piece of molding missing. Did you see that?

25 A. Yes.

C6iQcam3

Campbell - Cross

1 Q. Do you remember that being a piece of molding missing
2 there?

3 A. No.

4 Q. Then turn to the next photograph. This again is a couple
5 of windows. Can you tell us what part of the apartment is
6 depicted in this or captured in this photograph?

7 A. No.

8 Q. Do you see anything there that indicates that that
9 particular part of the apartment is a construction site?

10 A. No.

11 Q. The next, I guess, three photographs are dark, darker and
12 darkest photographs of the bathrooms, then there is one final
13 photograph, and I ask you if you can identify what that one is,
14 the last one?

15 A. I'm not sure.

16 Q. You don't know which part of the apartment it is?

17 A. No.

18 Q. Is there anything in that photograph that indicates that
19 this portion of the apartment is a construction site?

20 A. No.

21 Q. You testified about the floors. Do you recall whether
22 there was any discussion about the floors during the course of
23 the inspection?

24 A. Not specifically, just that they were unfinished.

25 Q. So you don't recall whether there was any conversation at

C6iQcam3

Campbell - Cross

1 all during the course of the inspection about the floors being
2 unfinished?

3 A. No.

4 Q. Do you recall any discussion of why the floors were
5 unfinished?

6 A. No.

7 Q. Do you recall any discussion in which Sponsor's
8 representatives indicated it was unfinished because they
9 thought that's what you and your designer had requested?

10 A. I remember hearing that, but I'm not sure it was at the
11 inspection.

12 Q. So you don't know whether you heard it at the inspection --
13 if you didn't hear it at the inspection, when would you have
14 heard it?

15 A. I don't know.

16 Q. By the way, in the photographs that we just looked at that
17 were taken by Mr. Gleicher, did you see anything that indicated
18 any problems with the floors other than the fact that they
19 weren't stained the way you were expecting them to be?

20 A. No.

21 Q. In the course of the inspection, Sponsor representatives
22 agreed to stain the floors, isn't that correct?

23 A. Yes.

24 Q. And you don't have any knowledge as to whether
25 Mr. Gleicher, your architect, and someone on behalf of the

C6iQcam3

Campbell - Cross

1 Sponsor had had discussion about staining the floors or not
2 staining the floors sometime prior to the inspection?

3 A. No. I knew we wanted to install.

4 Q. You knew you wanted to install?

5 A. Into the floor.

6 Q. Outlets in the floor?

7 A. Yeah.

8 Q. And you knew that was going to be done by your contract,
9 not by the Sponsor, is that correct?

10 A. I don't know.

11 Q. I see. Do you know what would be entailed in installing
12 outlets in the floor?

13 A. No.

14 Q. You don't know whether it would be necessary to remove and
15 take up portions of the finished floor?

16 A. I assume so.

17 Q. Because you would have to lay wiring underneath the floor?

18 A. Mmm-hmm. Yes.

19 Q. Excuse me?

20 A. Yes.

21 Q. You thought that --

22 A. Well, because we did that in our current apartment. We did
23 that in our current apartment.

24 Q. You took up the floor, put wiring underneath it, and then
25 created -- either replaced that or created or repaired it, is

C6iQcam3

Campbell - Cross

1 that what you're saying?

2 A. Yes.

3 Q. So you're assuming that that was the same thing that was
4 intended in this apartment, the one at The Mark?

5 A. I'm not sure.

6 Q. You talked about the kitchen and your dissatisfaction with
7 the kitchen on direct examination. One of the items you
8 mentioned was a microwave. There was no microwave there,
9 correct?

10 A. Correct.

11 Q. Was there any conversation about where the microwave was?

12 A. Not that I recall.

13 Q. Do you recall any conversation where you were told or your
14 representatives were told the microwave was in storage in the
15 building and would be installed upon move-in?

16 A. No.

17 Q. You also, I believe, testified in connection with the
18 kitchen, that the burners and grates and burners on the cooktop
19 were not there, is that correct?

20 A. Yes.

21 Q. You noticed that yourself?

22 A. Yes.

23 Q. Do you recall any conversation about where those pieces
24 were?

25 A. No.

C6iQcam3

Campbell - Cross

1 Q. Now, you said something about a sliding door. You noticed
2 something that you didn't like about the sliding door, is that
3 what you said?

4 A. Yeah. I was in error. I thought the question was about
5 the door that goes to the terrace, and that was -- that
6 particular item was the door from the kitchen that led from the
7 kitchen into the back hallway.

8 Q. There was something wrong with that door in your view?

9 A. Yes.

10 Q. Which was what, it didn't open cleanly?

11 A. It didn't open cleanly. I think it was cracked. I don't
12 recall exactly.

13 Q. Was there a problem with the sliding doors or pocket doors
14 in the kitchen?

15 A. That's what that door was.

16 Q. You're saying that the door from the terrace was a sliding
17 door or pocket door?

18 A. No. No. But it was difficult to get out on to the terrace
19 with the door.

20 Q. So that was the problem with the kitchen doors?

21 A. No, there were two separate issues.

22 Q. And what was --

23 MR. ALTER: You are cutting her off.

24 A. There were two separate issues. One --

25 Q. One was the door to the terrace --

C6iQcam3

Campbell - Cross

1 A. Correct.

2 Q. -- didn't open easily?

3 A. Right.

4 Q. What about the sliding door issue, what was that about?

5 A. I don't remember exactly, but it was cracked, and you
6 couldn't slide it to get out of the kitchen easily.

7 Q. And didn't Sponsor agree to replace that door?

8 A. Not specifically at that time.

9 Q. Well, they put it on the punch list, didn't they?

10 A. Correct.

11 Q. That means it was an item that was going to have to be
12 corrected?

13 A. Correct.

14 Q. Isn't that what it means?

15 A. Yes.

16 Q. And that means the Sponsor was going to be obligated to
17 correct it?

18 A. Yes.

19 Q. By putting it on the punch list, the Sponsor was indicating
20 that it would take responsibility to correct it, isn't that
21 right?

22 A. Yes.

23 Q. You talked about no shower enclosures; they were missing in
24 the master bathroom, correct?

25 A. Yes.

C6iQcam3

Campbell - Cross

1 Q. They were also not in one of the other bathrooms, correct?

2 A. I think more than one.

3 Q. Do you know whether if the contract and plans for your
4 suite required the Sponsor to install enclosures in all of the
5 bathrooms?

6 A. No.

7 Q. Do you know how many bathrooms the Sponsor had agreed to
8 install shower enclosures in?

9 A. No. I assume every one.

10 Q. You assumed every one, but you're not certain at this time,
11 is that what you're saying?

12 A. Yes.

13 Q. Do you recall any discussion during the course of the
14 inspection about shower enclosures?

15 A. Only that they were missing.

16 Q. Do you recall any -- by the way, do you recall who pointed
17 out that they were missing?

18 A. No, I don't.

19 Q. Do you recall whether the Sponsor or whether the Sponsor's
20 representative said anything about what would happen with
21 respect to the shower doors?

22 A. No.

23 Q. Do you recall whether they said anything in terms of an
24 explanation of why the shower doors were not there?

25 A. No.

C6iQcam3

Campbell - Cross

1 Q. But the Sponsor's representatives acknowledged that the
2 shower doors would be installed, correct?

3 A. Yes.

4 Q. In whatever bathrooms they were supposed to be installed,
5 correct?

6 A. Yes.

7 Q. You mentioned toilet accessories. Do you recall a
8 discussion of toilet accessories?

9 A. Yes.

10 Q. During the inspection?

11 A. Yes.

12 Q. What do you recall about that?

13 A. That they were absent.

14 Q. Did the Sponsor's representative say anything about toilet
15 accessories?

16 A. I don't recall exactly, but I assume they were going to
17 install them.

18 Q. Did they indicate during the course of the inspection where
19 the toilet accessories were at that time?

20 A. I don't recall.

21 Q. You talked about closets and the fact that the closets
22 essentially were just sort of Sheetrock enclosures, is that
23 correct?

24 A. Yes.

25 Q. In other words, the closet doors were in place, correct?

C6iQcam3

Campbell - Cross

1 A. Yes -- not all of them.

2 Q. You mean there were some closet doors that had not -- some
3 doors between a closet in the other part of the apartment were
4 missing?

5 A. In the hallway.

6 Q. Is that one or two or three or how many?

7 A. I don't recall exactly.

8 Q. Was there discussion of closet doors that you recall?

9 A. I don't recall.

10 Q. Was there a dis -- now, inside the closet was what, just a
11 blank Sheetrock wall?

12 A. Yes.

13 Q. Do you have an understanding as to what the Sponsor's
14 obligations were with respect to the installation of closet
15 interiors?

16 A. No.

17 Q. Do you recall any discussion of the closets during the
18 course of the inspection?

19 A. Yes.

20 Q. What do you recall about that discussion?

21 A. That they weren't finished.

22 Q. Did anyone say anything about what would happen?

23 A. No, but I'm sure the Sponsor --

24 Q. Well, you don't know, right?

25 A. Right.

C6iQcam3

Campbell - Cross

1 Q. Now, the terrace, you said that some of the spaces between
2 the pavers were wider than you thought proper?

3 A. Yes.

4 Q. And you expressed -- did you or anyone else express a
5 concern that someone's heel might get caught in some of those
6 spaces?

7 A. Yes.

8 Q. Was there any other safety issues regarding -- did you view
9 that as a safety issue?

10 A. A safety issue and an aesthetic one.

11 Q. It was an aesthetic issue; you didn't like the way the
12 pavers were laid in the terrace, correct?

13 A. No, because it was unsafe also.

14 Q. You said aesthetic and you said safety. I want to ask you
15 what is the aesthetic problem that you perceived with respect
16 to the pavers?

17 A. That they weren't designed -- that way there was debris
18 between the pavers.

19 Q. What kind of debris was between the pavers?

20 A. Paper, some leaves, cigarette butts.

21 Q. So you didn't just want the Sponsor to remove the debris,
22 you wanted the Sponsor to move the pavers closer together, is
23 that correct?

24 A. Yes.

25 Q. And one of your concerns was aesthetic --

C6iQcam3

Campbell - Cross

1 A. Yes.

2 Q. -- you said. So you didn't think it looked good, is that
3 what you mean?

4 A. Yes.

5 Q. Did you have a concern about someone's heel getting caught,
6 is that your other concern?

7 A. Yes, it was a very uneven surface.

8 Q. I'm sorry, I didn't hear you?

9 A. It was an uneven surface.

10 Q. When you say uneven surface, you mean the top of the paver
11 or which surface was it that was uneven?

12 A. The top of the pavers. It was difficult to walk either
13 from the spaces between the pavers and some were a little
14 lower. Nothing had been done to the terrace at all.

15 Q. You mean the terrace was the way it had been prior to the
16 renovation of the building is your recollection?

17 A. I never saw it exactly, but it didn't look like anybody had
18 done anything to it.

19 Q. You thought the pavers that were there had not been
20 installed by the Sponsor, is that what you're saying?

21 A. I didn't know for sure.

22 Q. And they had some kind of a rough surface which you didn't
23 like, is that what you're saying?

24 A. That it was difficult to walk on.

25 Q. But because of the rough surface on the pavers, is that

C6iQcam3

Campbell - Cross

1 what you're saying?

2 A. Yes, and because they were far apart.

3 Q. You mean they were like crumbling?

4 A. No.

5 Q. I'm sorry, you said far apart?

6 A. Far apart.

7 Q. I'm sorry, I misheard you. Was there anything else
8 discussed about the terrace during the course of the
9 inspection?

10 A. Not that I recall.

11 Q. Was there anything else at all about the apartment that was
12 discussed during the inspection?

13 A. There was much discussed.

14 Q. What else do you remember the heat?

15 A. Hot water, the system's elevators.

16 Q. Was that discussed during the inspection with the Sponsor?

17 A. Yes, after an incident.

18 Q. Just I'm not asking you about the incident, but I'm going
19 to ask you what was discussed with the Sponsor after whatever
20 incident you're referring to?

21 A. I don't know --

22 Q. What did your people say? What did the Sponsor say?

23 A. I don't know.

24 Q. Was there a discussion with the Sponsor's representatives
25 at the inspection about the heat?

C6iQcam3

Campbell - Cross

1 A. Yes.

2 Q. What did the sponsor's representative say to you?

3 A. I don't know. It was told to me, I didn't --

4 Q. It was outside your presence?

5 A. Correct.

6 Q. What did the Sponsor's representative say about air
7 conditioning, if you know?

8 A. Same.

9 Q. It was outside your presence, is that what you're saying?

10 A. Yes.

11 Q. In whose presence was it, if you know?

12 A. I don't know.

13 Q. Hot water, was that discussed with the Sponsor in your
14 presence?

15 A. Yes.

16 Q. What did the response --

17 A. Not in my presence -- I'm sorry, no.

18 Q. So you all went back down to the lobby of the building
19 after the inspection, correct?

20 A. Yes.

21 Q. Did you and your group have a conversation in the lobby of
22 the building before you left the building?

23 A. Yes.

24 Q. So whatever the condition of the lobby was, it was not such
25 that you couldn't stand around and have a conversation with

C6iQcam3

Campbell - Cross

1 your representatives, is that right?

2 A. Correct.

3 Q. Is there anything in the lobby that interfered with
4 anyone's ability to walk from the front door of the building to
5 the elevators?

6 A. No, but we had to be careful not to trip on the covering on
7 the floor.

8 Q. What kind of covering? Paper?

9 A. I'm not sure.

10 Q. Was there anything in the lobby that interfered with the
11 ability of a person to pass from the elevator to the front door
12 of the building?

13 A. No.

14 Q. I would ask you to take a look at Defendant's 72. That's
15 in the bigger notebook. That's an email addressed from
16 Mr. Gleicher to you on January 12, 2009. Do you have a
17 recollection of receiving it?

18 A. No.

19 Q. It refers in the second paragraph to J.P.. This is the
20 gentleman you identified on your direct as a sales agent for
21 the Sponsor?

22 A. Yes.

23 Q. Can you read the second sentence in that paragraph read it
24 out loud, please?

25 A. In the second paragraph?

C6iQcam3

Campbell - Cross

1 Q. Yes, please.

2 A. "There are no floor outlets called for, so we will need to
3 do some surgery to get it in at the living room area."

4 Q. Do you recall receiving that information from Mr. Gleicher
5 in substance or in those words?

6 A. Yeah, I knew we had to do it.

7 Q. You knew you had to do surgery to install floor outlets in
8 the great room?

9 A. Yes.

10 Q. When he says there are no floor outlets called for, did you
11 understand that to mean that there are no floor outlets that
12 the contract or that the offering plan requires the Sponsor to
13 install?

14 A. I understand.

15 Q. So you were going to have to do that with your contractor,
16 is that your understanding?

17 A. I wasn't sure whether we were -- I know we were going to
18 pay for it. I wasn't sure whether -- who was going to actually
19 do the work.

20 Q. So, you knew it was your responsibility; not the Sponsor's
21 responsibility?

22 A. Financially, yes.

23 MR. BRAUN: I'd ask that defendant's 72 be received in
24 evidence.

25 MR. ALTER: No objection.

C6iQcam3

Campbell - Cross

1 THE COURT: Defendant's 72 is received in evidence.

2 (Defendant's Exhibit 72 received in evidence)

3 Q. I want to talk about the pavers for a second. You
4 expressed a concern that a woman's high heel can be caught
5 between them?

6 A. Yes.

7 Q. Did you express a concern that a not high heel, a heel
8 other than a woman's high heel, would get caught?

9 A. No, but a small child, it was -- they were wide apart.

10 Q. What would happen with respect to a small child?

11 A. A little -- if you had a small child with a small foot, you
12 know, he could turn his foot in it. They were that wide.

13 Q. Would you take a look at 74 again, which are Mr. Gleicher's
14 photographs. If you would go through them, you will see that
15 the third photograph is a doorway out to the terrace?

16 A. Yes.

17 Q. Those are the pavers we were talking about -- that floor
18 covering that you see through this glass door, those are the
19 pavers you're talking about, correct?

20 A. Just one second.

21 Q. Of course.

22 A. Where is the picture?

23 Q. It's Exhibit 74 in the big notebook. And it's the third
24 photograph.

25 A. Yes.

C6iQcam3

Campbell - Cross

1 Q. My question is, are those the pavers that you've been
2 talking about?

3 A. Those are some of the pavers, but towards the front of the
4 terrace they widened considerably.

5 Q. Can you from memory tell us how wide they were? What's
6 your best recollection of how wide the spaces were?

7 A. I would say up to three-quarters of an inch, at least.

8 Q. So close to the wall of the building, they were whatever is
9 shown on this photograph, correct? That's your testimony?

10 A. Yes.

11 Q. But to the right, toward the parapet, they were further
12 apart, the pavers?

13 A. Yes.

14 Q. Up to maybe three-quarters of an inch? Hard to say at this
15 time, but what's your best recollection?

16 A. They were much wider. At least three-quarters of an inch.
17 Enough for debris to be in between them too.

18 Q. I would like you to look at Defendant's 28, please, also in
19 the big notebook. Do you recall receiving this email from
20 Mr. Gleicher on the morning of April 16, 2009?

21 A. No.

22 Q. Do you recall receiving an email from Mr. Gleicher that
23 listed items that he felt needed to be addressed in the
24 apartment?

25 A. No.

C6iQcam3

Campbell - Cross

1 Q. Do you have any recollection of Mr. Gleicher being asked to
2 prepare a list of items that needed to be addressed in the
3 apartment?

4 A. He wasn't asked --

5 Q. I'm sorry?

6 A. No.

7 Q. Do you dispute that you received this email; that you were
8 copied on this email from Mr. Gleicher on the morning of
9 April 16, 2009?

10 A. No.

11 MR. BRAUN: May it be received in evidence, your
12 Honor?

13 MR. ALTER: No objection here, your Honor.

14 THE COURT: Defendant's Exhibit 28 is received in
15 evidence.

16
17 (Defendant's Exhibit 28 received in evidence)

18 Q. If you look at the third paragraph of Mr. Gleicher's email,
19 he says in part, "The only items that I can see preventing
20 Roberta from occupying the apartment are the unfinished floors,
21 the lack of hobs (grates) on the cooktop, and the lack of
22 heat."

23 Do you have a recollection of Mr. Gleicher expressing
24 the view that these items prevented you from taking occupancy?

25 A. No.

C6iQcam3

Campbell - Cross

1 Q. Or prevented you from occupying the apartment, I should
2 say?

3 A. No.

4 Q. Then he goes on to say the other items on the list are
5 cosmetic in nature. Do you have any recollection of
6 Mr. Gleicher expressing the view that everything else was
7 cosmetic in nature?

8 A. No.

9 Q. You have no recollection?

10 A. No.

11 Q. Are you disagreeing with Mr. Gleicher's characterization of
12 the other items as being cosmetic in nature?

13 A. Of the ones he listed here, no, I don't disagree.

14 Q. Did you respond to this email? I guess you don't remember,
15 right?

16 A. I don't remember.

17 Q. I'm sorry --

18 A. I don't remember.

19 Q. By the way, on Defendant's 24, which is the inspection
20 statement, you signed that document, correct?

21 A. Yes.

22 Q. And you initialed all of the pages after the cover page, is
23 that correct?

24 A. Yes.

25 Q. Did you discuss the document with anyone prior to signing

C6iQcam3

Campbell - Cross

1 it?

2 A. No.

3 Q. But you had two attorneys with you at the time you signed
4 it correct? Mr. Gray and Mr. Cohen, correct?

5 A. Mr. Gray wasn't representing me.

6 Q. I understand, but he is an attorney who was with you,
7 correct?

8 A. Yes.

9 Q. By the way, did Mr. Gray express any thoughts during the
10 course of the inspection as to things he thought were defective
11 or wrong in the apartment?

12 A. We were all discussing them, yes.

13 Q. So is the answer to my question yes?

14 A. Yes.

15 Q. Do you know if Mr. Gray expressed views as to defects in
16 the apartment to representatives or the Sponsor?

17 A. I don't know.

18 Q. Did you discuss the inspection -- before signing the
19 inspection statement, did you discuss it with Mr. Gleicher?

20 A. No.

21 Q. Mr. Ubell?

22 A. No.

23 Q. Now, turning to Exhibit 63 that's in the large notebook,
24 and that's already been received in evidence, again, this is
25 the email exchange starting on 4:38 p.m. on the afternoon of

C6iQcam3

Campbell - Cross

1 the inspection where, among other things, Mr. Gleicher writes
2 to you: "I just wanted to tell you that I think the apartment
3 is absolutely fabulous. The light, openness, view, ceilings,
4 finishes, etc., etc., etc., I hope you feel the same way."

5 And you responded: "I definitely feel the same way,"
6 and you went on to say some other things.

7 Did you have an understanding of what Mr. Gleicher
8 meant by finishes?

9 A. No, not specifically.

10 Q. So you don't know whether he was referring to painting, for
11 example, molding?

12 A. No.

13 Q. He also uses the words etc., etc., etc., so that means he
14 was talking about more than the enumerated items in this email,
15 correct?

16 A. I assume so.

17 Q. And you assumed so at the time, correct?

18 A. Yes.

19 Q. And you responded that you definitely felt the same way,
20 correct?

21 A. Yes.

22 Q. So you understood at the time that when he said -- when he
23 was talking about the apartment being fabulous, he was
24 referring to more than light, openness, views, ceilings and
25 finishes, correct?

C6iQcam3

Campbell - Cross

1 A. Yes.

2 THE COURT: Is this an appropriate place to take our
3 recess. How much more do you have of Ms. Campbell?

4 MR. BRAUN: I have a fair amount more, your Honor, but
5 it is certainly a good spot to take a recess.

6 THE COURT: We will take our luncheon recess now until
7 2:00 p.m.

8 Ms. Campbell, you may step down. You're excused once
9 again. Be careful of the wires.

10 We will reconvene at 2:00. Have a good lunch.

11 (Witness recessed)

12 MR. BRAUN: Your Honor, will the courtroom be open to
13 us if we want to come back into the courtroom?

14 THE COURT: Yes, I will make arrangements for it to be
15 opened at 1:45.

16 MR. BRAUN: Thank you.

17 (Luncheon recess)

18 (Continued on next page)

C6iQcam3

Campbell - Cross

1 AFTERNOON SESSION

2 2:00 pm

3 (Trial resumes)

4 (In open court)

5 THE COURT: Please be seated. Are the parties ready?

6 MR. BRAUN: Yes.

7 MR. ALTER: We are.

8 THE COURT: You may continue your inquiry, Mr. Braun.

9 MR. BRAUN: Thank you, sir.

10 CROSS-EXAMINATION continued

11 BY MR. BRAUN:

12 Q. I want to go back and ask you a few more questions about
13 the inspection. I want to ask you, therefore, to look at
14 Defendant's 24. It is in the big notebook and it is the
15 inspection statement. Tell me when you are ready.

16 Do you have it?

17 A. Yes.

18 Q. If we start with Page 1 of 4, which is the second page of
19 the document, there is nothing on that page about the
20 bathrooms, correct?

21 A. Correct.

22 Q. And on Page 2 of 4, also there is nothing there about the
23 bathrooms, correct?

24 A. Correct.

25 Q. Now, if we turn to 3 of 4, there are a number of entries by

C6iQcam3

Campbell - Cross

1 master bath, correct?

2 A. Yes.

3 Q. One of them is the third from the bottom, install shower
4 enclosure. That indicates that there was a shower enclosure of
5 some sort that was missing from that particular bath, correct?

6 A. Yes.

7 Q. We agree on that?

8 A. Yes.

9 Q. Now then the next room on the list, on the same page is
10 Bathroom No. 4, and again the third item is install shower
11 enclosure. So the shower enclosure, everybody agreed, was
12 missing from Bathroom No. 4, correct?

13 A. Yes.

14 Q. Now if we go onto Page 4 of 4, which is the last page, then
15 there are some entries -- actually, bear with me. Sorry for
16 the delay. (Pause)

17 Do you see anything on 4 of 4 about the other
18 bathrooms in the unit?

19 A. Bathroom 3 and 2.

20 Q. That's Bedroom No. 2 and 3?

21 A. Oh, I am sorry.

22 Q. There is nothing in there about other bathrooms, correct?

23 A. Correct.

24 Q. There is no indication on this inspection statement that
25 there were shower enclosures or any other items missing from

C6iQcam3

Campbell - Cross

1 the other bathrooms in the unit, correct?

2 A. Correct.

3 Q. And do you recall how many bathrooms there were in the
4 unit?

5 A. I believe four and a half.

6 Q. Thank you.

7 Now I want to ask you to look at 74, which are the
8 photographs Mr. Gleicher took. I want to direct your attention
9 to one in particular which is the very last one before you get
10 to the pictures of bathrooms. Please tell me when you've found
11 it.

12 A. The two windows?

13 Q. Yes, a photograph of two windows.

14 Now, if you look at the window on the left and you
15 look specifically on the right door frame of the upper window,
16 there is something there, isn't there, that appears to be
17 affixed to the window frame? It is a small item, do you see
18 it?

19 A. On the right-hand window?

20 Q. It is on the right-hand window. Also if you see it on the
21 right-hand window?

22 A. Yes.

23 Q. Do you know what that is?

24 A. It looks like tape.

25 Q. It is an L-shaped -- sorry -- not on the window pane, but

C6iQcam3

Campbell - Cross

1 on the frame of the window on the right there is some kind of
2 a -- I don't want to characterize it. There is a thing there.
3 Do you see it, a little L-shaped thing?

4 A. Yes.

5 Q. Do you know what that is?

6 A. I think it is a temporary window guard. I don't know.

7 Q. You think it is a temporary window guard?

8 A. I am not sure.

9 Q. Did you ever hear the expression a window stop?

10 A. Yes.

11 Q. Do you know what the function of that window stop is?

12 A. Yes.

13 Q. What is it?

14 A. To keep the window from opening I believe more than four
15 inches.

16 (Off-the-record discussion).

17 Q. Actually, Ms. Campbell, if I could direct you back to 24,
18 which is the inspection statement, and again to the last page.
19 I may have misspoke and misled you. I would like to go over
20 with you something again.

21 A. I have it.

22 Q. Now again if you look at Page 4 of 4, next to Bedroom No.
23 2, there are some entries labeled, "Bath." Do you see them?

24 A. Yes.

25 Q. Is there any item there indicating missing shower

C6iQcam3

Campbell - Cross

1 enclosures?

2 A. No.

3 Q. And then below the entry for Bedroom No. 2 there is entries
4 for bedroom No. 3, correct?

5 A. Yes.

6 Q. Sort of as a subheading, it says "Bath," underlined. Do
7 you see that?

8 A. Yes.

9 Q. And there are four items listed there for that bath. Do
10 you see them?

11 A. Yes.

12 Q. Are any of those items about a missing shower enclosure?

13 A. No.

14 Q. Thank you.

15 Also I believe you testified on direct that when you
16 came to New York for the inspection, you were prepared and
17 willing to close the purchase after, immediately after the
18 inspection had you been satisfied with what you saw. Is that
19 correct?

20 A. Yes.

21 Q. You said that you could have wired funds had there been a
22 closing. Is that correct?

23 A. Yes.

24 Q. But you didn't have checks for the purchase price balance,
25 did you?

C6iQcam3

Campbell - Cross

1 A. No.

2 Q. Do you know whether the contract allowed you to pay by
3 wire?

4 A. No.

5 Q. You don't know, correct?

6 A. No.

7 Q. Can you take a look at Defendant's 2 in the big notebook,
8 please. Would you specifically take a look at Section 3.2.

9 Do you see in the middle of that paragraph it says the
10 check or checks for the balance and all other sums due sponsor
11 pursuant to this agreement shall be a good certified check of
12 purchaser or official bank or cashier's check, and then it says
13 made payable, et cetera.

14 Were you aware of that requirement in the contract at
15 the time that you came to New York for the inspection?

16 A. No.

17 Q. I want to direct your attention again to Defendant's 28 in
18 the same notebook, which is an e-mail that Mr. Gleicher sent to
19 Mr. Cohen and you on the morning of April 16th. Do you have
20 that?

21 A. Yes.

22 Q. Now, his second paragraph begins, "I have another thought
23 on the potential means to delay the closing."

24 Do you have any recollection of Mr. Gleicher being
25 asked to come up with means to delay the closing?

C6iQcam3

Campbell - Cross

1 A. No.

2 Q. Do you have any recollection of Mr. Gleicher volunteering
3 to look for means to delay the closing?

4 A. No.

5 Q. So if Mr. Gleicher was instructed or asked to look for
6 means to delay the closing, that instruction did not come from
7 you, is that what you're saying?

8 A. Yes.

9 Q. It was not made in your presence, is that also what you're
10 saying?

11 A. Correct.

12 Q. Because you don't know anything about that kind of
13 instruction, correct?

14 A. Pardon?

15 Q. You don't know anything about that kind of instruction?

16 A. No, I don't.

17 Q. Do you have any recollection on the night of April 15th of
18 any discussions or communications about hey, we have to figure
19 out a way to delay the closing?

20 A. Well, we certainly weren't going to close on the 16th with
21 an apartment in the condition that it was, and I was being
22 pressured to close on the 16th.

23 Q. You said you were being pressured to close. What do you
24 base that on?

25 A. Mr. Marton.

C6iQcam3

Campbell - Cross

1 Q. This is something Mr. Marton said to you at the inspection?

2 A. I don't remember when it was. It could have been the next
3 day.

4 Q. It could have been on the conversation, the telephone
5 conversation that took place on the next day?

6 A. Yes.

7 Q. Do you remember what time of the day that conversation took
8 place?

9 A. No.

10 Q. But if it took place in the afternoon of the next day, then
11 it was after this e-mail from Mr. Gleicher, correct?

12 A. Yes.

13 (Off-the-record discussion)

14 Q. Would you take in the other notebook, please take a look at
15 43, Plaintiff's 43.

16 Now, do you see that e-mail then, it says it was sent
17 by Mr. Marton to Mr. Senbahar at 3:31 pm on the afternoon of
18 April 16th, 2009. Does that in any way refresh your
19 recollection -- withdrawn.

20 Mr. Marton begins his e-mail saying just finished
21 conference call with purchaser and lawyer and Canter. Does
22 that in any way refresh your recollection that the conversation
23 with Mr. Marton that you referred to took place in the
24 afternoon of the 16th?

25 A. No.

C6iQcam3

Campbell - Cross

1 Q. Turning again to the bigger notebook, would you please take
2 a look at 75, the exhibit marked 75 for identification.

3 Did you receive these e-mails?

4 A. No. Not that -- I don't remember.

5 Q. Well, the first e-mail on the first page which is actually
6 I guess chronologically the latest is Monday, April 20, 3:50 pm
7 from Mr. Gleicher to Bailey, presumably Mr. Vitacco. Do you
8 know who Mr. Vitacco was at the time?

9 A. No.

10 Q. Were you ever advised Mr. Gleicher had retained an
11 expediter or code consultant?

12 A. No.

13 Q. Do you know what an expediter or code consultant is?

14 A. No.

15 Q. In the e-mail to Mr. Gleicher -- sorry -- from
16 Mr. Gleicher, he tells Mr. Vitacco (tack) that the client is
17 becoming increasingly concerned --

18 THE COURT: We have a great sound system. You just
19 have to use the microphone.

20 Q. -- the e-mail to Mr. Vitacco from Mr. Gleicher says in part
21 the client is becoming increasingly concerned that the Mark is
22 going to go bust and she does not want to be forced into a
23 closing only to have the project blown up. Can you provide any
24 ammunition for her?

25 Do you have any recollection of anyone being asked to

C6iQcam3

Campbell - Cross

1 provide ammunition for any purpose relating to this
2 transaction?

3 A. No.

4 Q. Do you have any recollection of Mr. Gleicher being asked to
5 look for technical reasons or problems that would support
6 delaying the closing?

7 A. Technical?

8 Q. Any kind of technical or legal objection that would support
9 delaying the closing?

10 A. No.

11 MR. BRAUN: Your Honor, we have stipulated -- well,
12 this witness doesn't recall these e-mails and may never have
13 seen them. We have stipulated that they were sent and I would
14 ask they be received in evidence.

15 MR. ALTER: No objection.

16 THE COURT: Defendant's Exhibit 75 and Plaintiff's
17 Exhibit 43 are received.

18 (Defendant's Exhibit 75 received in evidence)

19 (Plaintiff's Exhibit 43 received in evidence)

20 BY MR. BRAUN:

21 Q. I ask you to take a look at the next exhibit in the
22 notebook which is 76. Did you see any of these e-mails prior
23 to today?

24 A. No.

25 Q. Do you recall being advised that someone on your behalf was

C6iQcam3

Campbell - Cross

1 looking into whether the elevators were appropriately permitted
2 and licensed?

3 A. No.

4 Q. Do you recall being advised back in around April of '09
5 that someone on your behalf was looking into the records behind
6 the TCO to see if it was properly supported?

7 A. Yes.

8 Q. What do you recall about that?

9 A. I just know that we were looking, someone was looking into
10 that condition of the apartment.

11 Q. Do you know who?

12 A. No.

13 MR. BRAUN: Again we have stipulated about this
14 document, your Honor and I would, therefore, ask that
15 Defendant's 76 be received in evidence.

16 MR. ALTER: No objection.

17 THE COURT: Defendant's exhibit 76 is received.

18 (Defendant's Exhibit 76 received in evidence)

19 BY MR. BRAUN:

20 Q. Now I would like you to look at Exhibit 22 in this
21 notebook, please.

22 A. Is there a 22?

23 Q. I have misidentified the document. Please give me a
24 minute. (Pause)

25 Ms. Campbell, would you please take a look at Exhibit

C6iQcam3

Campbell - Cross

1 27 in the big notebook. It is Defendant's 27.

2 A. Yes.

3 Q. Did you receive that document on or about April 20, 2009?

4 A. I don't recall.

5 Q. So you don't recall? Is it true you don't recall whether
6 you read it?

7 A. No.

8 Q. I am sorry.

9 A. I don't recall receiving it.

10 Q. You don't recall receiving it?

11 A. No.

12 Q. Do you know whether you ever read it?

13 A. No.

14 MR. BRAUN: Your Honor, this is the inspection report
15 of plaintiff's inspector, and I ask that pursuant to
16 stipulation, it be received in evidence. It is Defendant's
17 22 --

18 MR. ALTER: 27.

19 MR. BRAUN: 27? I apologize.

20 MR. ALTER: No objection to 27 coming in.

21 THE COURT: Defendant's Exhibit 27 is received.

22 (Defendant's Exhibit 27 received in evidence)

23 BY MR. BRAUN:

24 Q. Ms. Campbell, you testified on direct that the work
25 remained to be performed in this unit was not, in your view,

C6iQcam3

Campbell - Cross

1 punch list work. Is that correct?

2 A. Because of the volume.

3 Q. It was not the individual items; it was the volume?

4 A. Well, it was in terms of the major systems.

5 Q. By the "major systems," you mean heat, hot water, et
6 cetera?

7 A. Yes.

8 Q. And elevators, right?

9 A. Yes.

10 Q. They're not even on the inspection statement, correct?
11 They're treated differently?

12 A. On the Sponsor's.

13 Q. I am sorry?

14 A. On the Sponsor's inspection list, yes.

15 Q. The contract provides for inspection statement, and we have
16 already identified Exhibit 24 as the inspection statement. Are
17 you talking about something else?

18 A. No.

19 Q. Now, you testified that you had other experience with punch
20 lists, correct?

21 A. Yes.

22 Q. In connection with various homes that you and your then
23 husband built?

24 A. Built, yes.

25 Q. You built without your husband?

C6iQcam3

Campbell - Cross

1 A. No. We didn't build it together. We bought it as -- built
2 by someone, certified spec houses.

3 Q. That was your home in California, it was a certified spec
4 house, is that what you're saying?

5 A. Yes. Not his and my house, but my house I bought
6 subsequent to the divorce.

7 Q. Was that one of the houses you referred to on your direct
8 testimony when you mentioned a number of residences in
9 California?

10 A. Yes, that is one of them.

11 Q. What were the others?

12 A. There were two in Montana, one in Mexico, one in Rochester,
13 New York.

14 Q. And then there was the one house in California?

15 A. Correct.

16 Q. You view your experience with those projects as comparable
17 to what this project should have worked like in terms of punch
18 lists?

19 A. Yes.

20 Q. And you view those projects as valid comparisons to the
21 Mark Hotel project?

22 A. Yes.

23 Q. At the time of the construction on those projects, those
24 other projects, did you or you and your husband own the
25 property?

C6iQcam3

Campbell - Cross

1 A. No. No. They were like golf -- I am not sure how they
2 configured it. They were planned communities that we bought
3 new housing that was being built.

4 Q. Did you buy them, those properties before the construction
5 was done?

6 A. Yes.

7 Q. You paid for the properties before the construction was
8 done?

9 A. Yes.

10 Q. Did you pay --

11 A. We didn't close.

12 Q. You contracted to buy the properties?

13 A. Right.

14 Q. Before the construction was done?

15 A. Right.

16 Q. You closed at the end of the construction or toward the end
17 of the construction?

18 A. After an inspection.

19 Q. Is that true of all of the properties that you referred to?

20 A. Yes.

21 Q. So then none of these projects were ones where you
22 actually, you or your husband actually hired a contractor to
23 build something on property that you already owned?

24 A. That's correct.

25 Q. If you could look again at Exhibit 43 in the smaller

C6iQcam3

Campbell - Cross

1 notebook, Plaintiff's 43. I think you testified on direct you
2 or Mr. Cohen had indicated in the conference call on April 16th
3 that you would close if the sponsor addressed or remedied, or
4 whatever the word was, the items on that list?

5 A. Yes, I think it was missing the gas, but yes.

6 Q. Well, you think that you specifically talked about gas on
7 that occasion?

8 A. I don't recall.

9 Q. You talked about heat and hot water, correct?

10 A. Right.

11 Q. As far as you can recall, this is a correct list or
12 complete list of the items that were specified to the sponsor
13 in that call?

14 A. They were the large items, yes.

15 Q. Were there others that you mentioned as far as you know?

16 A. No.

17 Q. Do you have any recollection of what the Sponsor's
18 representative said in response to that list?

19 A. No, but I remember being given assurances the work would be
20 completed, but not verbatim.

21 Q. Not verbatim? You don't remember the exact words?

22 A. Right, exactly.

23 Q. Were you told that the sponsor was working on them
24 immediately?

25 A. Yes.

C6iQcam3

Campbell - Cross

1 Q. Do you have any recollection of being told that don't go
2 back to California today or tomorrow, stay around for a few
3 more days and come back and see the apartment because we're
4 working on it? Do you recall anything like that in words or
5 substance?

6 A. No.

7 Q. There was no suggestion that you remember that you should
8 defer your return to California and come back to the apartment?

9 A. No.

10 Q. Now, before you went back to California, you found that
11 newspaper article, correct?

12 A. Yes.

13 Q. Then you went back to California Friday afternoon. Is that
14 correct?

15 A. Yes.

16 Q. The 17th?

17 A. Yes.

18 Q. Over the weekend you began to look at -- strike that --
19 over the weekend you started an internet search for other
20 possible apartments to buy in New York. Is that correct?

21 A. Yes.

22 Q. So would you please look in the, again in the big notebook,
23 at defendant's 32. The e-mail at the bottom --

24 A. I am sorry.

25 Q. Tell me when you're ready.

C6iQcam3

Campbell - Cross

1 A. Sorry. Okay. I have it.

2 Q. The e-mail at the bottom appears to be from you to Mr.
3 Cohen and Mr. Gleicher and it says, "Okay, don't flip out, but
4 in the meantime what do you think of the penthouse at Solo
5 Mews?"

6 Did you send that e-mail to Mr. Cohen and Mr. Gleicher
7 on Sunday, April 19th?

8 A. Yes.

9 Q. And on top of the page there is an e-mail from Mr. Cohen to
10 you for Monday morning that. You received that e-mail from him
11 on that morning?

12 A. I don't recall.

13 Q. But you sent the one on the bottom?

14 A. Yes.

15 MR. BRAUN: I ask Defendant's 32 be received in
16 evidence.

17 MR. ALTER: No objection.

18 THE COURT: Defendant's Exhibit 32 is received in
19 evidence.

20 (Defendant's Exhibit 32 received in evidence)

21 BY MR. BRAUN:

22 Q. When you said in your e-mail to Mr. Cohen and Mr. Gleicher
23 okay, "don't flip out," you understood that that was because
24 you were doing a dramatic change of direction, correct?

25 A. Yes, we had been so single-minded for so long.

C6iQcam3

Campbell - Cross

1 Q. Now I would ask you to look at Defendant's 99 in the same
2 notebook. Do you recall any of these e-mails?

3 A. No.

4 Q. If you look at the first page of the document, do you
5 recall being advised on the morning of April 22 -- well, prior
6 to that -- that Julia and Richard had looked at the Soho Mews
7 apartment on the preceding day?

8 A. I don't recall the timing, but I was asking them to.

9 Q. So Julia and Richard did look at Soho Mews around Tuesday
10 of that week. Is that correct?

11 A. I am not sure.

12 Q. Julia is Julia Cahill, correct?

13 A. Yes.

14 Q. And Richard is Richard Gray or --

15 A. Richard Gray.

16 MR. BRAUN: This e-mail exchange was produced to us by
17 plaintiff, and I ask that it be received in evidence as
18 Defendant's 99, your Honor.

19 MR. ALTER: No objection.

20 THE COURT: Defendant's Exhibit 99 is received in
21 evidence.

22 (Defendant's Exhibit 99 received in evidence)

23 BY MR. BRAUN:

24 Q. But you do recall that Mr. Gray and Ms. Cahill looked at
25 the Soho Mews apartment during that week that began of April

C6iQcam3

Campbell - Cross

1 20, correct?

2 A. Yes.

3 Q. Now please take a look at Defendant's 80 for identification
4 in the same notebook. Ms. Campbell, do you remember this
5 e-mail exchange?

6 A. No.

7 Q. Do you remember that Richard and Julia visited 57 Irving on
8 your behalf --

9 A. Yes.

10 Q. -- during that week? They did during that week, correct?

11 A. I don't recall the exact timing.

12 Q. But they did do it?

13 A. Yes.

14 Q. Do you recall asking for materials regarding the particular
15 apartment at 57 Irving?

16 A. Yes.

17 Q. Written materials?

18 MR. BRAUN: I would ask, since it has been produced to
19 us by plaintiff, I ask that Defendant's 80 be received in
20 evidence.

21 MR. ALTER: No objection.

22 THE COURT: Defendant's Exhibit 80 is received in
23 evidence.

24 (Defendant's Exhibit 80 received in evidence)

25 BY MR. BRAUN:

C6iQcam3

Campbell - Cross

1 Q. By the way, you asked Mr. Gray and Ms. Cahill to visit the
2 unit at 57 Irving Place on your behalf, correct?

3 A. Yes.

4 Q. And you asked them to visit the unit at Soho Mews on your
5 behalf, correct?

6 A. Yes.

7 Q. Now if you will please take a look at Defendant's 100. The
8 top is an e-mail from Ms. Cahill to you, in which she says we
9 had a very nice visit at 57 Irving today, and it is dated
10 Friday, April 24.

11 Do you recall being advised by Ms. Cahill -- strike
12 that. First of all, do you remember this e-mail at all?

13 A. No.

14 Q. Do you recall being advised by Ms. Cahill she had a nice
15 visit to 57 Irving?

16 A. In substance, yes.

17 MR. BRAUN: I ask that Defendant's 100 be received in
18 evidence.

19 MR. ALTER: No objection.

20 THE COURT: Defendant's Exhibit 100 is received.

21 (Defendant's Exhibit 100 received in evidence)

22 BY MR. BRAUN:

23 Q. Now please look at Defendant's 98. I'd like to -- first of
24 all --

25 A. Defendant's 98?

C6iQcam3

Campbell - Cross

1 Q. Yes.

2 A. Sorry.

3 Q. It is in the big notebook?

4 A. Okay.

5 Q. Defendant's 98, tell me when you have it.

6 A. I have it.

7 Q. Do you remember any of these e-mails?

8 MR. ALTER: It should be noted she is not copied on
9 these e-mails.

10 A. No.

11 BY MR. BRAUN:

12 Q. Well, if you look at the second page, there is an e-mail
13 from Ms. Campbell to Mr. Cohen, Mr. Gleicher, Ms. Cahill, dated
14 Monday, April 27, at 4:06 pm. Do you remember that e-mail?

15 A. No.

16 Q. Of course you don't dispute that you sent it? It is from
17 your files?

18 A. Correct.

19 MR. BRAUN: I ask that Defendant's 98 be received in
20 evidence.

21 MR. ALTER: No objection.

22 THE COURT: Defendant's Exhibit 98 is received.

23 (Defendant's Exhibit 98 received in evidence)

24 BY MR. BRAUN:

25 Q. Now, Ms. Campbell, if you look at that e-mail on the second

C6iQcam3

Campbell - Cross

1 page from you to Mr. Cohen, Mr. Gleicher and Ms. Cahill for
2 Monday afternoon, it says in part -- well, it says in part that
3 you're waiting for the offering plan, and so you do recall that
4 you did get an offering plan for 57 Irving?

5 A. Yes.

6 Q. Then you go onto say, "After we review the plan and all is
7 as good as it seems right now, I would like to go ahead with 57
8 Irving."

9 Do you have a recollection of expressing that view to
10 any of these people?

11 A. I am sure I was willing to take the next step to find out
12 when the construction was being finished, that kind of thing,
13 not to sign a contract.

14 Q. In other words, as far as you're concerned, the next step
15 is to find out when the construction at 57 Irving would be
16 completed?

17 A. And other germane information.

18 Q. Such as?

19 A. Such as how much input I would have during the
20 construction, what about the -- how many units had been sold
21 and who the people were because it was a small project.

22 Q. So assuming you were satisfied with what you saw in the
23 offering plan as of April 27, you were prepared to go ahead
24 with 57 Irving, whatever "go ahead" means, correct?

25 A. Yes.

C6iQcam3

Campbell - Cross

1 Q. Now please take a look at Plaintiff's 45. That would be in
2 the smaller notebook.

3 A. I have it.

4 Q. You do remember that e-mail, don't you?

5 A. Yes.

6 MR. BRAUN: I ask Plaintiff's 45 be received in
7 evidence.

8 MR. ALTER: No objection.

9 THE COURT: Plaintiffs' Exhibit 45 is received in
10 evidence.

11 (Plaintiff's Exhibit 45 received in evidence)

12 BY MR. BRAUN:

13 Q. Now, the bulk of this e-mail is in the form of an e-mail
14 from you to Mr. Cohen, correct?

15 A. Yes.

16 Q. And you sent it to him in the expectation that he would
17 forward it to the sponsor, correct?

18 A. Yes.

19 Q. This e-mail is really sort of a prelude or almost a set-up
20 to the four-way conference call that you participated in the
21 following day, April 21, correct?

22 A. Yes.

23 Q. This e-mail expresses your concerns as of the morning of
24 April 20?

25 A. Yes.

C6iQcam3

Campbell - Cross

1 Q. The e-mail, in your e-mail you say, among other things,
2 that "the condition of the apartment in and of itself is not my
3 greatest concern," right?

4 That is what you wrote there?

5 A. Yes.

6 Q. You also wrote that, said that you knew that, "with time
7 and necessary care," it could be made into what you wanted,
8 correct?

9 A. Yes.

10 Q. In fact, you had the financial wherewithal to complete all
11 the work yourself if the sponsor failed to fulfill its own
12 obligations, correct?

13 A. Yes.

14 Q. You spent roughly a million dollars to fix up the apartment
15 on Central Park West, correct?

16 A. Yes.

17 Q. So what was really bothering you as of that day was not so
18 much really the condition of the apartment, right?

19 It was the fear that the sponsor was somehow
20 financially unstable?

21 A. Yes.

22 Q. Is that fair to say?

23 A. Yes, because I didn't think they would finish the apartment
24 or they were capable of finishing the apartment, but if they
25 worked, it was easy to do.

C6iQcam3

Campbell - Cross

1 Q. Do you know how many workmen were on the site at the Mark
2 Hotel on the day you were there?

3 A. No.

4 Q. Did you try to find out?

5 A. No.

6 Q. Did you ask anyone?

7 A. No.

8 Q. In your view, is there a minimum number of workmen who
9 would be engaged in work at the site on that day that would
10 indicate a financial soundness on the part of the sponsor?

11 A. No.

12 Q. How many people did you see in the lobby? How many workmen
13 do you think you saw in the lobby?

14 A. I don't remember.

15 Q. Was it more than five?

16 A. Going in and out and working, probably.

17 Q. More than 10?

18 A. I don't remember.

19 Q. If there were less, if the total aggregate number of
20 construction workers in the building on that day were less than
21 10, you would not find that very comforting, right, in terms of
22 the ability of the sponsor to complete work in the building?

23 A. Correct.

24 Q. If there were a hundred people working in the building on
25 that day, that would be an indication that the sponsor did have

C6iQcam3

Campbell - Cross

1 financial capabilities, correct?

2 A. I am not in a position to say that.

3 Q. But, in any event, you were worried about the financial
4 condition of the sponsor as of that point in time, right?

5 A. Yes.

6 Q. You were at a point of decision, right?

7 A. No. I was waiting to see whether they would finish my
8 apartment. I still was willing to close if the apartment were
9 finished.

10 Q. From your point of view, the basic purpose of the April 21
11 call that took place on the next day was to get some kind of
12 comfort from the sponsor regarding its future performance?

13 A. Correct.

14 Q. You asked the Sponsor's representatives for some kind of a
15 commitment as to when the work in the apartment would be
16 completed, correct?

17 A. Yes.

18 Q. And you don't remember them making any kind of commitment?

19 A. Not hard and fast, no.

20 Q. Did they make any kind of a commitment that they would do
21 the work?

22 A. They said several weeks, yes.

23 Q. Did they say anything about having started the work?

24 A. I don't recall.

25 Q. Did they say anything about the status of the heat or air

C6iQcam3

Campbell - Cross

1 conditioning?

2 A. We didn't discuss specifics.

3 Q. You didn't discuss any specific items during that call?

4 A. Not that I recall.

5 Q. Was there any discussion of the hot water or its status as
6 of that moment in time?

7 A. Again I don't recall discussing the specifics.

8 Q. Now, in terms of requesting assurances, do you recall
9 whether it was yourself or Mr. Cohen who made a request, or
10 perhaps it was both of you?

11 A. I don't recall.

12 Q. Do you recall the words that were used to request
13 assurances?

14 A. Not specifically.

15 Q. Do you recall any specific assurance that was requested
16 other than specification of the time the work in the apartment
17 would be complete.

18 Q. We wanted financials, statement of financial viability.

19 Q. Did you explain what you meant by statement of financial
20 viability or did Mr. Cohen explain that?

21 A. I don't recall, but it was about the health of the overall
22 project, not only just that apartment.

23 Q. Did you specify what type of a document you were looking
24 for?

25 A. No.

C6iQcam3

Campbell - Cross

1 Q. You don't remember anything that Mr. Marton or Mr. Canter
2 said other than you're not entitled to it?

3 A. No. That is all I remember.

4 Q. The "it" was what, in your understanding?

5 A. Financial, any kind of information related to the financial
6 viability of this project.

7 Q. Do you have a recollection of being told in that call
8 something as to when the hotel was expected to open?

9 A. I don't remember, but I know it kept being delayed.

10 Q. But in that call --

11 A. No.

12 Q. -- were you told anything about when the hotel was expected
13 to open?

14 A. Not that I recall.

15 Q. Did you ask or did Mr. Cohen ask for information about as
16 to when the hotel would be opened?

17 A. Not that I recall.

18 Q. Did you or Mr. Cohen ask to adjourn your closing until
19 after the hotel was opened?

20 A. No.

21 Q. You say with a lot of emphasis you're confident you did not
22 make that kind of request or suggestion?

23 A. Yes.

24 Q. Was there any discussion in that call of a subordination
25 and non-disturbance agreement?

C6iQcam3

Campbell - Cross

1 A. I am not sure what that means.

2 Q. Was there any discussion of the idea that even if the
3 developer or sponsor defaulted under their mortgage loans, that
4 the co-op would remain undisturbed in the possession of its
5 space within the building?

6 A. I don't remember any discussion.

7 Q. Or any discussion of the fact or the idea a unit owner
8 would remain undisturbed in possession of their apartment if
9 there was a mortgage foreclosure by the Sponsor's bank?

10 A. No.

11 Q. Can you again take a look at Defendant's 3, which is the
12 offering plan. By the way, did your concerns as of April 20,
13 21 about the financial condition of the sponsor result in any
14 way of your knowledge about the number of units were under
15 contract?

16 A. It was part of it.

17 Q. Would you please take a look at the page in the offering
18 plan that has the stamp number of sponsors 00134.

19 A. (Pause)

20 Q. In the very first paragraph after the first sentence, it
21 says:

22 "Under the terms of such financing, sponsor may not
23 declare the plan effective until purchase agreements are signed
24 by bona fide purchasers for 15 percent of the suites offered
25 under the plan. Even if the plan is declared effective for the

C6iQcam3

Campbell - Cross

1 minimum number of sales, it is possible Sponsor can convey
2 suites with fewer than the minimum number of sales if
3 purchasers counted toward effectiveness and not ultimately
4 purchase a suite."

5 Then it goes on. You were not aware of that language
6 as of April 20-21, 2009, correct?

7 A. No, no.

8 Q. It also says:

9 "Purchasers under the plan will not be liable for any
10 payment under the construction loan and each suite will be
11 conveyed free and clear of the liens thereunder."

12 You were not aware of that language in the offering
13 plan, correct?

14 A. Correct.

15 Q. Had you been advised of that concept as of that point in
16 time?

17 A. No.

18 Q. Now, if you could turn, please, to page 00095 on the
19 document.

20 A. (Pause)

21 Q. Do you see that is a discussion of terms of mortgages, and
22 you were not familiar with the contents of that section as of
23 April 20-21, 2009. Is that correct?

24 A. Correct.

25 Q. In the end of the second paragraph, after explaining

C6iQcam3

Campbell - Cross

1 non-disturbance and the document called CTROA, it says.

2 "Accordingly, the cooperative leasehold will not be
3 terminated by reason of the default by Mark Hotel LLC of its
4 obligations in respect of any mortgage which will encumber the
5 leaseholder stake."

6 You were not aware of that language as of April 20-21,
7 2009, correct?

8 A. Correct.

9 Q. I want to ask you to turn to page 00140 in the document. I
10 specifically want to direct your attention to the third
11 paragraph on the page which says:

12 "Sponsor has not furnished any bond or other security
13 for the performance of the obligations of the Sponsor under the
14 plan. Sponsor's ability to perform its obligations under the
15 plan will depend on its financial condition from time to time.
16 No warranty is made that Sponsor will be financially able to
17 perform all or any of such obligations."

18 You were not familiar with that language as of April
19 20 and 21, 2009, correct?

20 A. Correct.

21 Q. Could you please take a look in the smaller notebook at
22 Plaintiff's 30.

23 A. I have it.

24 Q. Did you see that document on or about April 21, 2009?

25 A. I don't recall.

C6iQcam3

Campbell - Cross

1 MR. BRAUN: I would ask -- we have stipulated to
2 this -- I would ask that this particular letter be received in
3 evidence, Plaintiff's 30.

4 MR. ALTER: No objection.

5 THE COURT: Plaintiff's Exhibit 30 is received in
6 evidence.

7 (Plaintiff's Exhibit 30 received in evidence)

8 BY MR. BRAUN:

9 Q. Do you recall being advised, at or about the time of that
10 April 21 phone call, that Mr. Cohen was to mandate the return
11 of your down payment from the Sponsor?

12 A. I don't recall.

13 Q. Do you recall being advised at or about that time Mr. Cohen
14 advised the Sponsor's attorneys in writing that unless the down
15 payment was returned by the end of the week, he would initiate
16 a proceeding before the Attorney General?

17 A. No.

18 Q. Do you have any recollection of Mr. Cohen premising such
19 demands on the Sponsor's refusal to extend your closing date
20 until after the hotel had been built?

21 A. I am sorry. Would you repeat that.

22 Q. Did you know as of about April 21, 2009, that Mr. Cohen had
23 demanded the return of your down payment on the basis of the
24 stated reason that the Sponsor had refused to extend your
25 closing date until after the hotel had opened?

C6iQcam3

Campbell - Cross

1 A. No.

2 Q. Would you now take a look at Plaintiff's 32. Did you see
3 this letter on or about April 23, 2009?

4 A. I don't remember.

5 Q. Do you recall being advised that Sponsor's counsel had
6 written a letter to Mr. Cohen in response to Mr. Cohen's letter
7 to the Sponsor's counsel?

8 A. I know they had correspondence, but I wasn't aware of
9 anything else.

10 Q. Do you recall being advised that Sponsor's counsel had
11 stated in writing that appropriate elevator service will be
12 provided to your client upon closing should she choose to
13 occupy the suite?

14 A. No.

15 Q. Did you know at or about that time that Sponsor's counsel
16 had advised Mr. Cohen in writing that heat, hot water and air
17 conditioning service are in operation in the building and in
18 particular in your client's suite?

19 A. No.

20 Q. Did you know, were you advised at the end of April 2009
21 that Sponsor's counsel had advised Mr. Cohen in writing that
22 the floors in the suite had been finished?

23 A. No.

24 Q. Did you learn toward the end of April 2009 that Sponsor's
25 counsel had advised Mr. Cohen in writing that the shower

C6iQcam3

Campbell - Cross

1 enclosures had been completed?

2 A. No.

3 Q. Were you advised that Sponsor's counsel had written to Mr.
4 Cohen that many of the other punch list items identified at the
5 inspection had already been addressed?

6 A. No.

7 Q. Were you advised that Sponsor's counsel had written to Mr.
8 Cohen that Sponsor:

9 "Remains committed to trying to address any good-faith
10 issues raised by your client, but wishes to do so within the
11 parameters of the parties' rights and obligations that is set
12 forth in the offering plan and purchase agreement"?

13 A. No.

14 MR. BRAUN: I ask, since we stipulated, we all know
15 what this document is. I ask Plaintiff's 32 be received in
16 evidence.

17 MR. ALTER: One second, please. That is the one you
18 asked about earlier, right? No objection.

19 THE COURT: Plaintiff's exhibit 32 is received in
20 evidence.

21 (Plaintiff's Exhibit 32 received in evidence)

22 BY MR. BRAUN:

23 Q. Now I would ask you to look at Defendant's 37, please.

24 Ms. Campbell, as you can see, this appears to be a
25 letter, dated April 24, 2009, from Mr. Cohen to Mr. Canter. So

C6iQcam3

Campbell - Cross

1 I would ask you, first of all, have you seen that letter? I
2 should say -- withdrawn.

3 Did you see that letter on or about April 24, 2009?

4 A. I don't recall.

5 Q. You do recall being advised that Mr. Cohen had exercised
6 your adjournment right to put the closing back some period of
7 time?

8 A. Yes.

9 Q. Do you recall he pushed it back to May 11, 2009?

10 A. Yes.

11 Q. Do you recall learning that while Mr. Cohen had exercised
12 your adjournment right and to be the effect of scheduling the
13 closing for May 11, he then actually in the same letter said
14 that maybe you wouldn't show up for a closing at May 11?

15 A. I wasn't aware of that.

16 Q. Do you recall whether Mr. Cohen exercised your adjournment
17 right without consulting you first?

18 A. I am sure he must have consulted me.

19 Q. You just don't recall the consultation?

20 A. I don't recall it, no.

21 Q. Did you ever discuss with Mr. Cohen whether, in fact, you
22 were available to return to New York for a closing on May 11,
23 and just answer it yes, don't give me the contents other than
24 yes, no, we had a conversation or I don't remember.

25 A. I don't remember.

C6iQcam3

Campbell - Cross

1 MR. BRAUN: I ask Defendant's 37 be received in
2 evidence.

3 MR. ALTER: No objection.

4 THE COURT: Defendant's Exhibit 37 is received in
5 evidence.

6 (Defendant's Exhibit 37 received in evidence)

7 BY MR. BRAUN:

8 Q. I would ask the witness to take a look at Defendant's 78
9 for identification.

10 A. (Pause)

11 Q. I would like to ask you, Ms. Campbell, whether you saw
12 either of the e-mails on the first page on or about April 27,
13 2009?

14 A. I don't remember.

15 Q. Do you have any recollection of there being communications
16 between Mr. Cohen and Mr. Gleicher about laying low or staying
17 low until May 1?

18 A. No.

19 Q. You don't recall?

20 A. I don't recall.

21 MR. BRAUN: Your Honor, the parties have stipulated to
22 it, and I would ask that Defendant's 78 be received in
23 evidence.

24 MR. ALTER: No objection.

25 THE COURT: Defendant's Exhibit 78 is received.

C6iQcam3

Campbell - Cross

1 (Defendant's Exhibit 78 received in evidence)

2 BY MR. BRAUN:

3 Q. Now please look at Defendant's 38.

4 A. 38?

5 Q. Yes, please.

6 (Off-the-record discussion)

7 Q. Ms. Campbell, before I ask you about 38, I would like you
8 to go back to 78, please. Again looking at that first e-mail
9 from Mr. Cohen to Mr. Gleicher, do you have any understanding
10 as to why Mr. Cohen would be telling Mr. Gleicher to lay low or
11 I should say stay low at this point until May 1?

12 A. No.

13 Q. You don't recall? You don't have a recollection what
14 significance May 1 has?

15 A. I do.

16 Q. What was that?

17 A. That if they didn't have a closure by then, the project was
18 not viable at that point.

19 Q. Wasn't it Mr. Cohen's effort at this point to push the
20 closing back past May 1 to see whether there were any closings?

21 MR. ALTER: May we have that qualified as to her
22 understanding.

23 MR. BRAUN: Yes, of course.

24 THE COURT: Yes. She can only testify to her
25 understanding.

C6iQcam3

Campbell - Cross

1 BY MR. BRAUN:

2 Q. Do you have any understanding of whether Mr. Cohen was
3 seeking to have, encouraging Mr. Gleicher to stay low until May
4 1 because he was hoping that there be no closings by May 1?

5 A. No.

6 Q. No, you have no understanding?

7 A. No, I don't have any understanding.

8 Q. Please turn to 38 for a moment. You don't recall whether
9 you actually ever saw that letter, correct?

10 A. Correct.

11 (Continued on next page)

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C6iQcam5

Campbell - Cross

1 Q. You think you were told about it by Mr. Cohen?

2 A. I know I was.

3 Q. You know you were told about it, is that correct?

4 A. Yes.

5 Q. But you don't know whether you actually saw it?

6 A. Correct.

7 Q. And if you ever saw it, you don't know if you actually read
8 it, is that also correct?

9 A. That's correct.

10 MR. BRAUN: I would ask that Defendant's 38 be
11 received in evidence.

12 MR. ALTER: Your Honor, I have no real objection
13 except the fact that a different copy of it has already been
14 admitted under label Plaintiff's 13. If he wants it a second
15 time, I have no objection.

16 THE COURT: I object to that. It's already in.

17 MR. BRAUN: I'm sorry, I was looking at --

18 THE COURT: Fine. Move on.

19 MR. BRAUN: Thank you.

20 Q. Did you ever tell Sponsor or a Sponsor representative that
21 Ms. Cahill was no longer representing you?

22 A. No.

23 Q. Do you know whether anyone on your behalf told Sponsor or
24 Sponsor representatives that Ms. Cahill was no longer
25 representing you?

C6iQcam5

Campbell - Cross

1 A. No.

2 Q. Could you take a look at Defendant's 67 now, Ms. Campbell?
3 That's an email from Mr. Cohen to Ms. Cahill dated May 13,
4 2009. I would ask you whether you've seen it before?

5 A. I don't remember.

6 Q. Do you recall being advised that someone at Corcoran had
7 made inquiry in May of '09 regarding the status of The Mark
8 transaction?

9 A. No.

10 Q. Do you know who Kelly Mack was as of May 2009?

11 A. I knew that she was the person that was contacted by a
12 president of a real estate firm in California, and she was
13 allegedly the president of Corcoran.

14 Q. You mean it was Ms. Mack who was contacted or Ms. Liebman
15 who was contacted?

16 A. Oh, I'm sorry, it was Ms. Liebman, I apologize.

17 Q. That's all right. And that's back in '07 or '08 when you
18 were starting your search for a place in New York, correct?

19 A. Yes.

20 Q. So as of May '09, you didn't know who Kelly Mack was?

21 A. No.

22 Q. Did Ms. Cahill ever tell you that Kelly Mack or someone in
23 Corcoran had asked her about the transaction?

24 A. No.

25 Q. But as of this date, May 13, 2009, you had already advised

C6iQcam5

Campbell - Cross

1 Ms. Cahill that you were not interested The Mark Hotel,
2 correct?

3 A. Correct.

4 Q. You had lost your interest, correct?

5 A. Correct.

6 MR. BRAUN: Since the document is by Mr. Cohen and was
7 produced to us by plaintiff, I do ask that Defendant's 67 be
8 received in evidence.

9 MR. ALTER: No objection.

10 THE COURT: Defendant's 67 is received.

11 (Defendant's Exhibit 67 received in evidence

12 Q. Now, I'd like you to look at 68, the next item in the book.
13 I want to direct your attention to the very first email, the
14 latest email, which is on the top of the first page, and
15 appears to have been sent by you to Mr. Cohen on May 18, 2009.
16 Did you send him that email?

17 A. Looks like I did.

18 MR. BRAUN: I would ask that Defendant's 68 --

19 A. Yes.

20 Q. I'm sorry, did you have more to say?

21 A. No.

22 MR. BRAUN: I'd ask that Defendant's 68 be received in
23 evidence.

24 MR. ALTER: No objection.

25 THE COURT: Defendant's 68 is received.

C6iQcam5

Campbell - Cross

(Defendant's Exhibit 68 received in evidence)

Q. Now, in that email to Mr. Cohen, you had a postscript that says, "Please call me about The Mark. I just spoke with Julia. Kelly Mack may call me. I am happy to tell her everything, but Julia, and rightly so, wants your opinion on whether there are things I should specifically say or not say."

Do you have a recollection of communicating with Julia Cahill that -- communicating with Julia Cahill and her suggesting that you should speak to Mr. Cohen about an inquiry from Kelly Mack?

A. I don't.

Q. So you have no recollection of being advised by Julia Cahill that Kelly Mack might call, correct?

A. No.

Q. And you have no recollection of them reaching out to Mr. Cohen for his advice as to what to say to Ms. Mack?

A. I don't.

Q. Can you take another look at Defendant's 63. That's the email on the night of the inspection about the apartment being fabulous. Now, I want to ask you, Ms. Cahill, at the bottom right-hand corner the document says G00069, and I want to ask you if you have an understanding of what the significance of the letter G is?

A. No.

Q. I will tell you, Ms. Campbell, that the G indicates that if

C6iQcam5

Campbell - Cross

1 this document was produced to us by Mr. Gleicher in response to
2 a subpoena that we served upon him during discovery in this
3 case. I will further represent that it was not -- no copy of
4 the document was produced to us by you or your attorneys. I
5 want to ask you isn't that because you deleted it?

6 A. I deleted a lot of emails.

7 Q. And you never received an instruction from counsel,
8 correct, that you should not destroy documents?

9 A. No.

10 Q. So it's possible that there are other emails that were
11 received and then deleted regarding the Sponsor's interest in
12 having you come back to the building, correct?

13 THE COURT: Sustained. Anything is possible. How
14 much more --

15 MR. BRAUN: I am just about done, your Honor.

16 THE COURT: OK, because to sit and ask this witness
17 about what she understands the legend of a Bates number to mean
18 when she has already testified that she doesn't read
19 agreements, she doesn't read letters, she has lawyers who do
20 all that stuff for her, so I don't know how many more questions
21 you want to put to her on --

22 MR. BRAUN: No, I figured -- could you give me one
23 second, your Honor? I may be finished.

24 THE COURT: Yes.

25 (Pause)

C6iQcam5

Campbell - Cross

1 MR. BRAUN: Your Honor, I don't have anything further.

2 THE COURT: Thank you.

3 Redirect?

4 REDIRECT EXAMINATION

5 BY MR. ALTER:

6 Q. Ms. Campbell, I would like you to look at Defendant's
7 Exhibit 6, if you would, please.

8 A. I have it.

9 Q. Mr. Braun asked you some questions about this email, is
10 that correct?

11 A. Pardon?

12 Q. Mr. Braun asked you some questions about this?

13 A. Yes.

14 Q. There is a line there you say, "I am not in a rush to move
15 in, etc." Do you see what I'm referring to?

16 A. Yes.

17 Q. And when did you send this email?

18 A. January 2008.

19 Q. In January 2008, when were you expecting the closing to
20 take place?

21 A. May 1st of the same year.

22 Q. When the closing was delayed past -- into 2009, did your
23 situation about not being in a rush to move in change?

24 A. Yes.

25 Q. Let's look at Defendant's Exhibit 62. Talking about the

C6iQcam5

Campbell - Redirect

1 top email about which Mr. Braun asked you some questions. Are
2 you with me?

3 A. Yes.

4 Q. Now, you talk there about arranging to make an additional
5 trip. In the context of that email, could you please tell us
6 what you meant?

7 A. I wanted to have the assurance that the apartment was ready
8 for inspection.

9 Q. Well, you talk specifically about an additional trip. What
10 did you mean in that email about additional trip, if you
11 remember?

12 A. I don't recall.

13 Q. All right. I will move on. Defendant's Exhibit 74, the
14 pictures. Now, who took these pictures?

15 A. Paul Gleicher.

16 Q. What was his purpose at the inspection?

17 A. He was taking pictures just for refreshing his memory for
18 interior design purposes.

19 Q. Was it his purpose of the inspection to record defects in
20 the apartment?

21 A. No.

22 Q. Let me look at the pictures here and ask you on any of the
23 pictures, can you see if there was heat in the apartment?

24 A. No.

25 Q. Can you see if there is air conditioning in the apartment?

C6iQcam5

Campbell - Redirect

1 A. No.

2 Q. Can you see if there is hot water in the apartment?

3 A. No.

4 Q. With the possible exception of one bathroom picture, can
5 you see if there are shower enclosures in the apartment?

6 A. No.

7 Q. Do the floors show in the pictures?

8 A. Pardon?

9 Q. Do the floors show in the pictures?

10 A. Yes.

11 Q. Can you see from the picture, I don't know, can you see
12 whether the picture whether they show the floor was finished or
13 unfinished?

14 A. No, it's unclear.

15 Q. Now, Mr. Braun asked you about you could have wired money
16 into -- in order to satisfy the closing?

17 A. Yes.

18 Q. Where would you have wired the money?

19 A. I didn't have any -- I wasn't given any place yet.

20 Q. You're saying you could have wired the money?

21 A. Yes.

22 Q. Do you know what the tradition is in such circumstances?

23 A. No.

24 Q. Could you have wired the money into Mr. Cohen's escrow
25 account?

C6iQcam5

Campbell - Redirect

1 A. Yes.

2 Q. Could he therefore have written any checks that were
3 necessary?

4 A. Yes.

5 MR. BRAUN: Leading, your Honor.

6 THE COURT: It is leading. Is it possible? It's a
7 great little argument for why she didn't bring checks with her,
8 but she has just testified that she didn't know what the custom
9 was anyway.

10 MR. ALTER: All right. I will move on, your Honor.

11 Q. Let's look at Defendant's Exhibit 27. That's the report
12 from Mr. Ubell. Are you with me?

13 A. Yes.

14 Q. You testified in answer to a question of Mr. Braun that you
15 didn't recall receiving it. Do you remember that?

16 A. Yes.

17 Q. To whom was this addressed?

18 A. To Mr. Cohen.

19 Q. Well, it's to you --

20 A. It's to me care of Mr. Cohen.

21 Q. So it came directly to Mr. Cohen, is that correct?

22 A. Yes.

23 Q. Now, you were questioned by Mr. Braun and, for that matter,
24 by me about discussion you had on April 16. Do you remember
25 that?

C6iQcam5

Campbell - Redirect

1 A. Yes.

2 Q. During that conversation, was there any question -- was
3 there any discussion about how long it would take to finish the
4 things that were talked about?

5 A. Several weeks, two to three weeks, at least.

6 Q. Were you asked in that conversation to stick around for two
7 or three weeks to see whether the matters would be finished?

8 A. No.

9 MR. ALTER: Give me a minute, please.

10 (Pause)

11 BY MR. ALTER:

12 Q. Please turn to Defendant's Exhibit 98. Tell me when you
13 are with me.

14 A. Mmm-hmm. OK.

15 Q. Please turn to the second page. There is an email from you
16 dated April 27, and it says, "After we review the plan and all
17 is as good as it seems right now, I would like to go ahead with
18 57 Irving."

19 Now, are you saying that you were at that point going
20 to make a commitment to 57 Irving?

21 A. No.

22 Q. Did you ever make a commitment to 57 Irving?

23 A. No.

24 Q. At the time you sent this email, had you given up yet on
25 The Mark?

C6iQcam5

Campbell - Redirect

1 A. No.

2 Q. Let's look at Defendant's 68. Top email it says --
3 Mr. Braun asked you questions about this email. It says -- you
4 say in the PS to Mr. Cohen, "Kelly Mack may call me." Do you
5 see that?

6 A. Yes.

7 Q. Did Kelly Mack ever call you?

8 A. No.

9 Q. Did you have any conversation with her?

10 A. No.

11 Q. At this time Julia is Julia, that's Julia Cahill, is
12 getting you the apartment at 15 Central Park West?

13 A. Yes.

14 Q. Let's look at the bottom of that email. This chain
15 includes an email addressed to, among other people, Julia
16 Cahill, which has the subject: 15 CPW 11B deal sheet it says,
17 "Dear All: Attached you will find a deal sheet." Is that the
18 deal for the apartment at 15 Central Park West?

19 A. I assume so.

20 Q. What's the date of that?

21 A. May 18, '09.

22 Q. There was discussion before about deleting emails. Did
23 your computer at the time -- we're talking about April, May,
24 2009 -- did your computer at the time have an automatic delete
25 function?

C6iQcam5

Campbell - Redirect

1 A. No.

2 Q. What would happen with emails if you received them?

3 A. If I felt they were important to save, I would save them.

4 If I didn't feel I needed them, I would delete them.

5 Q. What if you didn't need them, what would happen?

6 A. They would still be in my in box and my email.

7 Q. Did you save emails connected with -- connected with the
8 project at The Mark?

9 A. Some.

10 Q. Did you delete others you felt weren't important or for
11 other reasons?

12 A. Yes.

13 Q. What reasons would they have been other than it was
14 unimportant, if any?

15 A. Just that I didn't think I'd ever need them again, why keep
16 them?

17 Q. Are you talking about deleting emails, are you talking
18 about contemporaneously in April or May of 2009?

19 MR. BRAUN: I think we are leading too much, your
20 Honor.

21 THE COURT: Sustained.

22 Q. To the extent you deleted any emails relating to The Mark,
23 when did you delete them?

24 A. Usually as they came. I would read them and decide whether
25 to save it or not.

C6iQcam5

Campbell - Redirect

1 Q. To the best of your knowledge, after this lawsuit began,
2 did you delete any emails regarding The Mark hotel?

3 A. No.

4 MR. ALTER: No further questions.

5 THE COURT: Anything further, Mr. Braun?

6 MR. BRAUN: No, your Honor.

7 THE COURT: I have just a couple of questions,
8 Ms. Campbell.

9 When is it that you decided not to go forward with
10 Unit 1402 at The Mark Hotel?

11 THE WITNESS: When they told me I couldn't come back
12 to reinspect it.

13 THE COURT: When was that?

14 THE WITNESS: I think it was April 29, 2009.

15 THE COURT: I am having difficulty understanding why
16 it is that on April 24 you would be communicating with folks
17 about 57 Irving Place if your heart was set on The Mark Hotel.

18 THE WITNESS: Because I had waited so long for The
19 Mark, and when I inspected it, it wasn't finished, neither was
20 the building close to being finished. Everything was late, and
21 I just felt deflated. I wanted to have a backup plan. I
22 wanted to see what else was out there. I wanted an apartment
23 by 2009 in the fall.

24 THE COURT: Did anyone ever tell you that the Sponsor
25 had represented that it was fixing the issues in the building?

C6iQcam5

Campbell - Redirect

1 THE WITNESS: They said they were going to.

2 THE COURT: Well, was it ever communicated to you that
3 the floors had been finished in the apartment?

4 THE WITNESS: No. No.

5 THE COURT: In the time line that was discussed during
6 opening statements, on April 28 you received or our attorney
7 receives a letter from Canter, and on the 29th you direct Cohen
8 to apply to the Attorney General's office?

9 MR. ALTER: Your Honor, the letter was sent on the
10 28th, federal Expressed received the 29th.

11 THE COURT: I just said on the 29th she decided that
12 she was no longer interested in The Mark and directed Cohen to
13 apply to the AG.

14 Why would you have your attorneys continue to stand by
15 their letter delaying the closing to May 11 if you had all
16 these other things in motion?

17 THE WITNESS: I didn't have anything in motion. I
18 just wanted to see what was out there.

19 THE COURT: But --

20 THE WITNESS: I still wanted to close up until
21 April 29. I still had hopes that they would say, all right,
22 it's taken us this long -- but from the very beginning of this
23 we could never get any information. Everything was always
24 being delayed, and then upon inspection, the project wasn't
25 even nearly completed, both the apartment and the building.

C6iQcam5

Campbell - Redirect

1 And so I had grave concerns about it.

2 THE COURT: Did anyone discuss with you during the
3 inspection whether The Mark Hotel had security personnel or
4 other personnel for the entrances to the building? Did you
5 raise that at all?

6 THE WITNESS: No, I had other things to think about.

7 THE COURT: Well, you walked into the lobby and you
8 said all this other stuff was going on. If you were going to
9 move into a \$18 million apartment, was there any concern on
10 your part as to whether or not there was appropriate security
11 in the building since there was no hotel operating, there was
12 no restaurant operating, and you said there were at least five,
13 maybe ten workmen, passing in and out of the lobby while you
14 were there, was that your testimony?

15 THE WITNESS: Yes.

16 THE COURT: So what did you understand the security in
17 the building to be?

18 THE WITNESS: I actually hadn't given it any thought.
19 I was concerned that I might be the only person living in the
20 building if I closed.

21 THE COURT: And if you had that concern, what did you
22 understand was going to be in place?

23 THE WITNESS: I didn't think that far ahead. I
24 just -- I still really wanted the apartment to be finished, and
25 I would have closed. And I think that would not have -- I just

C6iQcam5

Campbell - Redirect

1 didn't think that far ahead.

2 THE COURT: Well, as of the date of inspection, what
3 was your plan before you went up on the 14th floor? What was
4 your plan as to when you were going to move into the apartment?

5 THE WITNESS: Well, immediately after closing, I
6 wasn't going to move in immediately, but immediately I was
7 going to start decorating and getting the apartment ready to
8 move in.

9 THE COURT: How long did you envision that process was
10 going to take?

11 THE WITNESS: Well, several months because it takes --
12 we had chosen some things but we had to choose more, and if
13 you're customizing things, it takes a couple months, at least
14 three usually, so I knew it would be several months, and I
15 really wanted it finished by the fall of 2009.

16 THE COURT: All right. Do counsel wish to make any
17 further inquiries of Ms. Campbell based upon the Court's
18 questions? Anything further from the plaintiff?

19 MR. ALTER: Nothing from the plaintiff.

20 THE COURT: Anything?

21 MR. BRAUN: No, your Honor.

22 THE COURT: All right. Ms. Campbell, you are excused.
23 You may step down. We will take a very short recess, and
24 plaintiff will call the next witness, all right?

25 MR. ALTER: Thank you, your Honor.

C6iQcam5

Campbell - Redirect

1 (Witness excused; recess taken)

2 (In open court)

3 THE COURT: Would plaintiff call next witness?

4 MR. ALTER: Yes, plaintiff calls Mr. Richard Cohen.

5 RICHARD N. COHEN,

6 called as a witness by the Plaintiff,

7 having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. ALTER:

10 THE COURT: State your full name spell your last name
11 slowly for the court reporter.

12 THE WITNESS: Richard Cohen. Richard N. Cohen.

13 THE COURT: You may inquire.

14 MR. ALTER: Thank you, your Honor.

15 Q. Mr. Cohen, what's your profession?

16 A. I'm an attorney.

17 Q. In what jurisdictions are you admitted?

18 A. New York -- sorry, do I talk into this microphone?

19 THE COURT: Yes.

20 A. New York and Connecticut.

21 Q. Are you admitted into the bar of any federal court?

22 A. Eastern and Southern District.

23 Q. Of New York?

24 A. Yes.

25 Q. In what year were you admitted in New York?

C6iQcam5

Cohen - Direct

1 A. 1987.

2 Q. Is there a particular area of the law in which your
3 practice is concentrated?

4 A. Yes.

5 Q. What is that?

6 A. Real estate transactions.

7 Q. How long have you concentrated in this area of practice?

8 A. Approximately 24 years.

9 Q. Did you attend professional meetings while in law school?

10 A. I did.

11 Q. Which organization?

12 A. The International Council of Shopping Centers.

13 Q. What did you learn there?

14 MR. BRAUN: Excuse me? That is very ambiguous.

15 MR. ALTER: I'll withdraw it.

16 Q. How many closings have you handled in your career.

17 A. It was thousands, maybe over 2,000.

18 Q. Excluding the present matter, how many transactions have
19 ended up in litigation?

20 A. Two.

21 Q. Of those two, how many went to trial?

22 A. One.

23 Q. Did there come a time when you were introduced to Roberta
24 Campbell as a possible client?

25 A. Yes.

C6iQcam5

Cohen - Direct

1 Q. When was that?

2 A. It was late 2007.

3 Q. How did that come about?

4 A. Ms. Campbell was referred by a real estate broker.

5 Q. Who was that?

6 A. It was Julia Cahill.

7 Q. Did you represent Mrs. Campbell in connection with her
8 contract to purchase at The Mark Hotel?

9 A. I did.

10 Q. What was the name of your firm at the time?

11 A. Friedberg Cohen Coleman & Pinkas LLP.

12 Q. What is the name of your firm now?

13 A. Cohen & Coleman LLP.

14 Q. Now at that time, late 2007 to early 2008, was there
15 someone other than Roberta Campbell who was being named as the
16 purchaser in this transaction?

17 A. Yes.

18 Q. And who was that?

19 A. Mr. William Campbell.

20 Q. What happened to him and his interest, if you know?

21 A. His interest was assigned to Ms. Campbell.

22 Q. Was that on occasion of their divorce or in connection with
23 their divorce?

24 A. Correct.

25 Q. Did there come a time when Ms. Campbell signed the

C6iQcam5

Cohen - Direct

1 contract?

2 A. Yes.

3 Q. Please look at Defendant's Exhibit 2. Defendant's is the
4 bigger of the two books. Defendant's Exhibit 2 that's in
5 evidence, I believe. Is this the contract?

6 A. Yes.

7 Q. What's its date?

8 A. January 17, 2008.

9 Q. Was there an offering plan in connection with the offering
10 which included the unit here in question?

11 A. Yes.

12 Q. Did you receive a copy?

13 A. I did.

14 Q. Is that Defendant's 3? That's a separate book there.

15 My question, sir, was did you receive a copy of the
16 offering plan which was Defendant's Exhibit 3? That's a
17 separate book in front of you.

18 A. Yes.

19 Q. I believe that is in evidence. Please look at page 66
20 there.

21 A. Of which? Of the offering?

22 Q. Tell me when it is estimated the first closing is to take
23 place.

24 A. It says that the closings were supposed to begin in or
25 about May 2008.

C6iQcam5

Cohen - Direct

1 Q. According to the plan at the bottom of that page, what
2 happens if there isn't a closing by one year from that date?

3 A. Then the -- all of the purchasers would be entitled to the
4 return of their deposit; they would be entitled to rescind
5 their contracts.

6 Q. Was there a closing by May 1, 2008?

7 A. No.

8 Q. Was the plan ever declared effective by that date?

9 A. No.

10 Q. What are the consequences of declaring the plan effective?

11 A. When a developer declares of the plan effective, that is
12 the point of no return where the developer has to go forward
13 and finish creating the condominium or the coop that they are
14 creating.

15 Q. But it's his option whether to declare it effective
16 assuming he meets the prerequisites?

17 A. Right, they need 15 percent purchasers. 15 percent of the
18 units have to be in contract to declare the plan effective.

19 Q. At that point, it's still his option whether to go forward
20 or not?

21 A. Right.

22 MR. BRAUN: I'm sorry, effectively, Mr. Cohen is being
23 asked to give expert explanations of the law. Since this is
24 really background, I am not really objecting to the questions
25 that have been asked so far, but I could foresee a situation

C6iQcam5

Cohen - Direct

1 where this becomes problematic, so I just want to register that
2 concern.

3 MR. ALTER: I am moving on.

4 Q. Were you and Ms. Campbell eventually notified that the plan
5 was declared effective?

6 A. Yes.

7 Q. When approximately was that?

8 A. February 8, 2009.

9 Q. Please look at first Defendant's Exhibit 12. That's in the
10 bigger book.

11 A. Did you say defendant?

12 Q. Yes, Defendant 12 and then Plaintiff's 1, which is in the
13 smaller book.

14 Were these the notifications that you received?

15 A. Yes.

16 Q. What's the exact date on those?

17 A. February 26.

18 Q. Of?

19 A. 2009.

20 Q. Between the signing of the contract in January 2008 and
21 notification that the plan was declared effective in 2009, were
22 steps taken on behalf of Ms. Campbell to expedite process?

23 A. Process, you mean closings? Yes.

24 Q. And were you yourself involved in that?

25 A. I just heard about phone calls.

C6iQcam5

Cohen - Direct

1 Q. We will ask the people who made them. But you yourself
2 were not?

3 A. Right.

4 Q. Please refer to Plaintiff's Exhibit 1 in evidence and tell
5 us the originally scheduled closing date.

6 A. The original closing date scheduled by the Sponsor was
7 March 31, 2009.

8 Q. After that notification, what, if anything, did you do
9 personally to try to speed up the closing?

10 A. Made phone calls and emails.

11 Q. I'm sorry. And whom did you have these phone calls and
12 emails with?

13 A. Sponsor's represent -- sponsor's attorneys and/or
14 paralegals.

15 Q. And in particular what individual?

16 A. Michael Wefels.

17 Q. Who did you understand Mr. Wefels to be?

18 A. He was a paralegal from Kramer Levin.

19 Q. Is Exhibit Defendant's 16 one of those exchanges?

20 A. I'm sorry, which? Did you say Plaintiff or Defendant?

21 Q. Defendant 16, the bigger book.

22 A. Yes.

23 MR. ALTER: I'll offer that in evidence.

24 MR. BRAUN: No objection, your Honor.

25 THE COURT: Defendant's Exhibit 16 is received.

C6iQcam5

Cohen - Direct

1 (Defendant's Exhibit 16 received in evidence

2 Q. I would like to read two lines from a lower email from the
3 first page. It says, "When will they have a TCO?" And the
4 upper email says, which is the response of Mr. Wefels' says
5 "Prior to the closing."

6 Is Defendant's Exhibit 17 another of those
7 exchanges -- before I do that, what's the date on Defendant 16
8 before I get to 17?

9 A. It's March 9, 2009.

10 Q. Let's look at Defendant's Exhibit 17. What's the date on
11 that?

12 A. That's March 24.

13 Q. Let's look at Defendant's 17?

14 A. Oops, that's the wrong one. March 17. It's confusing
15 here. 17. March 12.

16 Q. Thank you.

17 Is that another email exchange that you had with
18 Mr. Wefels?

19 A. Yes.

20 MR. ALTER: I offer that in evidence.

21 MR. BRAUN: No objection.

22 THE COURT: Defendant's Exhibit 17 is received in
23 evidence.

24 (Defendant's Exhibit 17 received in evidence)

25 Q. Now, on the second page of this email of Plaintiff's 17,

C6iQcam5

Cohen - Direct

1 you ask three numbered questions of Mr. Wefels, is that
2 correct?

3 A. Yes.

4 Q. On page 1, we have 3 numbered paragraphs which are
5 Mr. Wefels -- the ones in lower case are Mr. Wefels' response
6 to you, correct?

7 A. Yes.

8 Q. And the capital letters, upper case comments on those --
9 under those things are your response further to Mr. Wefels, is
10 that correct?

11 A. Yes.

12 Q. Let look at the question you asked number 1.

13 "In order to properly plan for the closing we need
14 more detailed information regarding the status of the TCO than
15 just saying you would have it before closing."

16 Let me do it this way by asking his Honor to note the
17 paragraphs that I'm interested in, which is the Mr. Cohen's
18 comment on the second page, Mr. Wefels' response on the first
19 page, and Mr. Cohen's further response on the first page to
20 number one.

21 Let's move on to the next one. Please look at
22 Plaintiff's Exhibit 3. That's in the other book. Are you with
23 me? Tell me when you are, please.

24 A. Plaintiff's 3, yes.

25 Q. Is that yet another email exchange you had with Mr. --

C6iQcam5

Cohen - Direct

1 this is a one-way email is this an email you sent to
2 Mr. Wefels?

3 MR. BRAUN: Excuse me, your Honor. This is a
4 combination exhibit. I think it needs to be clarified as to
5 exactly what email or emails the examiner is referring to if he
6 is going to ask the witness about an email.

7 Q. Are all emails in Plaintiff's Exhibit 3 email exchanges
8 between yourself and Mr. Wefels?

9 A. Yes.

10 MR. ALTER: I would offer Plaintiff's Exhibit 3.

11 MR. BRAUN: One second, please.

12 MR. ALTER: Sure.

13 MR. BRAUN: No objection, your Honor.

14 THE COURT: Plaintiff's Exhibit 3 is received.

15 (Plaintiff's Exhibit 3 received in evidence)

16 MR. ALTER: I would just like to point out the second
17 paragraph on the page with Bates number 00650. I call your
18 Honor's attention to paragraph 2 of that email.

19 Q. Please refer, sir, to Plaintiff's Exhibit 50.

20 THE COURT: Just wait. For the record -- because if I
21 am going to follow the record, you have given me three
22 instructions, to get to an exhibit to find a certain paragraph
23 to figure out what the point is that you want to make by
24 bringing Plaintiff's Exhibit 3 to my attention. So the
25 paragraph that you are directing me to which you have referred

C6iQcam5

Cohen - Direct

1 to as paragraph number 2 --

2 MR. ALTER: It has a number on it.

3 THE COURT: -- says "I previously asked for some
4 direct information from the architects or engineers as the
5 estimated time that the TCO will be obtained. My client's not
6 ready to fly cross country based only on the statement that you
7 would have it before closing. Many Sponsors adjourn their
8 closing for additional 30 day periods after the initial closing
9 letters are sent out, and we need to know accurate information
10 and when the unit will be ready for inspection."

11 That's what's germane in this many, many multipage
12 email that constitutes Plaintiff's Exhibit 3 that, as has
13 already been previously noted, moves through a number of
14 non-sequential Bates numbers, right?

15 MR. ALTER: That is the point that I wish to bring out
16 at this point in time. Conceivably, I will refer to other
17 parts of this at some other point in the testimony.

18 THE COURT: OK, but there are so many emails in
19 Plaintiff's Exhibit 3 that have paragraph numbers, I'm not
20 going to do homework on this case.

21 MR. ALTER: No, we understand.

22 THE COURT: It's all going to be here or it isn't.

23 Next question. You were going to Plaintiff's Exhibit
24 50, I think.

25 MR. ALTER: Yes, I was.

C6iQcam5

Cohen - Direct

1 Q. Do you have that in front of you, sir, Mr. Cohen?

2 Plaintiff's Exhibit 50?

3 A. Yes.

4 Q. Is that another email you sent?

5 A. Yes.

6 MR. ALTER: I would like to offer that one.

7 MR. BRAUN: No objection, your Honor.

8 THE COURT: Plaintiff's Exhibit 50 is received.

9 (Plaintiff's Exhibit 50 received in evidence)

10 Q. Sir, to whom did you address that email?

11 A. It's to Ramon Chicon.

12 Q. Who is Ramon Chicon?

13 A. He was Sponsor's representative that was designated in the
14 closing notice to contact to set up an inspection of the unit.

15 Q. And that's Plaintiff's Exhibit 1 you were referring to?

16 Keep your hand on this one and look back at Plaintiff's Exhibit
17 1, please.

18 A. Yes, his name is listed there and his phone number and his
19 email.

20 Q. And your contact with him, your inquiry of him says -- let
21 me quote: "Sponsor's closing notice says to contact you
22 regarding inspection of the suite prior to closing. Please let
23 us know when you will be ready for an inspection."

24 Did you also call him that day, March 24th?

25 MR. BRAUN: Leading.

C6iQcam5

Cohen - Direct

1 THE COURT: Overruled.

2 MR. ALTER: You may answer.

3 A. Yes.

4 Q. Did you reach Mr. Chicon?

5 A. I did not.

6 Q. Did you subsequently learn through discovery in this action
7 an internal email exchange with defendant that you recall that
8 Mr. Chicon set off?

9 A. I did.

10 MR. BRAUN: I object to relevance grounds to review an
11 email that Mr. Cohen saw for the first time apparently as a
12 result of discovery of this lawsuit.

13 THE COURT: Overruled.

14 MR. ALTER: Let me read joint fact 33. It's on page
15 11 of the joint pretrial order.

16 "On March 24, 2009, there was an exchange of emails
17 between Mr. Chicon and Maria Pedernera, an Alexico employee. A
18 copy of an email thread containing these emails is Plaintiff's
19 Exhibit 51."

20 I don't remember if I offered Plaintiff's 50, if I
21 didn't, I would like to offer it now.

22 THE COURT: You did, and it is received.

23 MR. ALTER: And I would like to offer Plaintiff's
24 Exhibit 51.

25 MR. BRAUN: No objection to the Exhibit itself, your

C6iQcam5

Cohen - Direct

1 Honor. It is the potential questions that I may object to.

2 THE COURT: Plaintiff's Exhibit 51 is received.

3 (Plaintiff's Exhibit 51 received in evidence)

4 Q. Ms. Pedernera at the bottom sends an email to Ramon Chicon
5 saying, "phone call attorney for apartment 1402 re:
6 walk-through."

7 Mr. Chicon's response is "Hello Maria: Same drill as
8 before. Please call them back and let them know we will
9 contact them a couple days before we schedule the walk. You
10 cannot provide additional information. Thanks."

11 Now, sir, please refer back to Plaintiff's Exhibit 50.
12 And what is Mr. Chicon's response to your email?

13 A. He says, "I will let you know."

14 Q. Please refer to Defendant's Exhibit 18. That's the other
15 book.

16 MR. ALTER: I'm sorry, I didn't formally offer joint
17 fact 33. I read it in, but I didn't offer it. Any objection?

18 MR. BRAUN: Joint fact 33, no, sir, no objection.

19 MR. ALTER: So stipulated.

20 Q. Please refer to Defendant's Exhibit 18. Did you receive
21 that?

22 A. Yes.

23 MR. ALTER: I offer it in evidence.

24 MR. BRAUN: No objection.

25 THE COURT: Defendant's Exhibit 18 is received in

C6iQcam5

Cohen - Direct

1 evidence.

2 (Defendant's Exhibit 18 received in evidence)

3 Q. What is the date of that notification?

4 A. March 24, 2009.

5 Q. I trust you permit to lead saying, does this adjourn the
6 previously scheduled closing date to April 7?

7 A. Yes.

8 Q. And you received -- its dated March 24, is that correct?

9 A. We just said that.

10 Q. Is that the same date as your conversation in your email
11 with Mr. Chicon?

12 A. It is.

13 (Continued on next page)

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C6IJCAM6

Cohen - direct

1 Q. Did Mr. Chicon either in the e-mail or in response to a
2 phone call tell you that was being adjourned?

3 A. No.

4 Q. Where was Ms. Campbell at this time?

5 A. She was in California.

6 Q. Prior to this letter, when was the closing scheduled for?

7 A. March 31.

8 Q. This notice was sent to you by certified mail. Is that
9 correct?

10 A. Yes.

11 Q. You received a call by certify mail. Is that correct?

12 A. I think so.

13 Q. Go to the second page.

14 A. Yes.

15 Q. So the earliest you could have received this was when?

16 A. From the post office, a few days, I would assume.

17 Q. How long was this before the previous call, sir, previously
18 scheduled closing?

19 A. Less than a week.

20 Q. Did the closing get further adjourned from this April 7th
21 date?

22 A. Yes.

23 Q. How were you informed of this?

24 A. By letter.

25 Q. Is that from Kramer Levin?

C6IJCAM6

Cohen - direct

1 A. Yes.

2 Q. Is that Plaintiff's Exhibit 5?

3 A. Yes.

4 MR. ALTER: I offer it.

5 MR. BRAUN: No objection.

6 THE COURT: Plaintiff's exhibit 5 is received in
7 evidence.

8 (Plaintiff's Exhibit 5 received in evidence)

9 BY MR. ALTER:

10 Q. What is the date of this letter?

11 A. April 2nd.

12 Q. It was sent to you and to Ms. Cohen by --

13 MR. BRAUN: Excuse me? Ms. Cohen?

14 MR. ALTER: Did I say Ms. Cohen? I apologize. Let me
15 withdraw that and start again.

16 BY MR. ALTER:

17 Q. Was it sent to you and to Ms. Campbell and also William
18 Campbell by Federal Express. Is that correct?

19 A. Yes.

20 Q. So when is the earliest you could have received this
21 letter?

22 A. April 3rd.

23 Q. That was how long before the previously scheduled closing?

24 A. Again less than a week. April 7th, April 3, 4 days.

25 Q. Do you have a calendar for April in front of you?

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Cohen - direct

1 A. I have no idea -- here it is, yes, I do.

2 Q. Between April 3rd and April 7th there is a weekend, is
3 there not?

4 A. Yes.

5 Q. After this, receiving this letter, Plaintiff's 5, did you
6 have further correspondence with Mr. Wefels?

7 A. Yes.

8 Q. Is that Plaintiff's 7?

9 A. Yes.

10 MR. ALTER: I offer it.

11 MR. BRAUN: No objection, your Honor.

12 THE COURT: Plaintiff's Exhibit 7 is received in
13 evidence.

14 (Plaintiff's Exhibit 7 received in evidence)

15 BY MR. ALTER:

16 Q. I would like you to read, please, the four paragraphs at
17 the bottom of the first page of that.

18 A. Where it says Michael?

19 Q. Yes.

20 A. This is April 3rd. "We are in receipt of your third
21 closing notice adjourning the closing for the third time. I
22 previously asked you on numerous occasions to contact your
23 engineers, architects or expeditors to give us a reasonable
24 estimation of the time for the actual closings.

25 "Such requests have been ignored or answered with

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Cohen - direct

1 nonresponsive language. Additional calls to the contact person
2 listed in your closing notice for scheduling and inspection
3 have been met only with a response that we will let you know.
4 As we have explained, our client lives currently in California
5 and will need to fly to New York for the inspection and
6 closing. You have put her in an unacceptable, tenuous position
7 of having to wait week by week to make her plans to travel to
8 New York.

9 "The offering plan states that the Sponsor may from
10 time to time adjourn the closing upon reasonable prior notice.
11 We find that your one week back-to-back notices are
12 unreasonable and think that the Attorney General's Office would
13 also find the same."

14 Q. All right. Let's finish that. Please look at Page 1 of
15 that e-mail, the response by Mr. Wefels to your e-mail. I will
16 read the last sentence of that.

17 "Sponsor is as anxious to close as is your client and
18 is trying to be as accommodating and courteous as possible."

19 Now, during this time period between notification that
20 the offering plan was effective and the inspection, did there
21 come a time that you asked defendant for a reduction in the
22 purchase price?

23 A. Yes.

24 Q. Why was that?

25 A. Considering the state of the economy and there were many

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Cohen - direct

1 sponsors, many condominium developments that were having
2 trouble getting sponsors -- sorry -- getting purchasers to come
3 to closings, people were defaulting.

4 It seemed like the prudent and wise and proper thing
5 for a real estate attorney at that point in time, as many of my
6 colleagues were doing, to ask for a price reduction.

7 Q. Were you looking for a price reduction because you did not
8 want to close?

9 A. It wasn't me. Ms. Campbell, but absolutely not.

10 Q. Because Ms. Campbell did not want to close?

11 A. Absolutely not. It really came from me, not from her. It
12 just seemed like what a wise attorney would be asking for at
13 the time.

14 Q. Was it your request for reduced purchase price successful?

15 A. No.

16 Q. Now Plaintiff's Exhibit 5 schedules the closing for April
17 16th. As of the date of Plaintiff's Exhibit 5, which you can
18 refer to it and I'll tell you it was April 2nd, was the
19 walk-through scheduled?

20 A. No.

21 Q. When did the defendants schedule the walk-through, if you
22 recall?

23 A. Not till much closer to the closing date.

24 Q. Do you recall how the walk-through got scheduled?

25 A. It was a phone call from Mr. Wefels.

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Cohen - direct

1 Q. Please look at Plaintiff's Exhibit 141. Is the bottom
2 e-mail on the first page of that exhibit an e-mail you sent to
3 Ms. Campbell, Ms. Cahill and Mr. Gleicher after receiving that
4 phone call you just testified about?

5 A. It is.

6 MR. ALTER: I offer Plaintiff's Exhibit 141 in
7 evidence.

8 MR. BRAUN: No objection.

9 THE COURT: Plaintiff's Exhibit 141 is received in
10 evidence.

11 (Plaintiff's Exhibit 141 received in evidence)

12 BY MR. ALTER:

13 Q. Let me read it and ask you some questions about it.

14 "Attorney's office just called again. They now say
15 they expect the TCO on Monday. First time they have given an
16 estimate. They say the stop work order is just for the
17 sidewalk. Call Paul and you can confirm. Please tell us what
18 you can tell us about stop work order and Paul for the
19 confirmation"?

20 A. In the title report we found there was a stop work order,
21 so I was very concerned that considering the slow process of
22 construction, that maybe the whole project was going to come to
23 a halt. So I wanted the title company and Paul to check with
24 an expediter to find out what that stop work order referred to.

25 Q. By "Paul," that is Mr. Gleicher?

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Cohen - direct

1 A. Yes.

2 Q. Continuing my reading of it, "They would like to schedule
3 the walk-through on April 15th. I told them that was too short
4 notice as I have explained umpteen times you need more than a
5 week's notice to get here. I told them send me the TCO on
6 Monday when you get it. Then I will send it to my client, and
7 she will look into flight arrangements to get here for an
8 inspection and close perhaps a few days later depending on how
9 the inspection goes. That is if it is just punch list items or
10 anything major that is not completed."

11 Did Mr. Wefels ever confirm in writing that the
12 inspection was to be on April 15th?

13 A. I think there was a subsequent e-mail.

14 Q. Let's look at Plaintiff's Exhibit 8. Is that what you're
15 referring to?

16 A. Yes.

17 MR. ALTER: I offer Plaintiff's Exhibit 8 in evidence.

18 MR. BRAUN: I am sorry. I am struggling here because
19 there are multiple e-mails here. Your Honor, I don't have any
20 objection.

21 THE COURT: Plaintiff's Exhibit 8 is received.

22 (Plaintiff's Exhibit 8 received in evidence)

23 MR. ALTER: I would like to read from the second of
24 the two e-mails that are on this exhibit, my second, I mean the
25 bottom which is the earlier one.

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Cohen - direct

1 MR. BRAUN: I believe it is the third.

2 MR. ALTER: Okay. Mr. Cohen the bottom e-mail on the
3 page numbered 000966, Mr. Cohen asked Mr. Wefels have you
4 confirmed so she can make flight reservations, and this is
5 dated Friday, April 10th. On the same day Mr. Wefels says we
6 are confirmed for the walk-through.

7 BY MR. ALTER:

8 Q. Is that the written confirmation you were referring to?

9 A. Yes.

10 Q. Did you have occasion after that, before the 15th, to
11 e-mail Mr. Wefels further?

12 A. I think so.

13 Q. Well, look at the Defendant's Exhibit 28, please, and tell
14 me if that matches my description.

15 A. Defendant's?

16 Q. Defendant's 28. No, no, it is not Defendant's 28. I am
17 sorry. Yes, it is Defendant's 28. I am talking about the
18 third e-mail on Defendant's Exhibit 28. I understand Exhibit
19 28 is in evidence.

20 A. What is the number on it?

21 Q. It is a very lengthy e-mail chain.

22 A. What is the number on the bottom of the page?

23 Q. It is a very lengthy e-mail chain, but I am talking about
24 the middle e-mail on page numbered Bates 00271. Do you see
25 where I am referring to?

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Cohen - direct

1 A. 00271, yes, okay.

2 Q. The middle e-mail sent by you on 11:15 am --

3 MR. BRAUN: Objection only to form. I guess, I think
4 counsel is referring to the e-mail that begins in the middle of
5 the page and it appears sent on April 14 at 11:15 am. The
6 middle e-mail suggests there are at least three e-mails.

7 BY MR. ALTER:

8 Q. The middle of the page, the e-mail sent at the time that
9 has both Mr. Braun and I described it. Do you see where I am
10 referring?

11 A. I see one that says 11:15 am.

12 Q. That is the one. Please read Paragraph 1 and then I'll ask
13 you a question about it.

14 A. "Mr. Wefels again. As mentioned yesterday, the link you
15 sent according to our architect was only a record of an
16 application to New York City. We will need more than that,
17 such as the final approval."

18 Q. Now, can you tell us what that is about?

19 A. The Sponsor was supposed to get certain permission from the
20 city for extended stays, and we were looking for the actual
21 document that the city had granted that.

22 Q. Please explain this extended stay concept to us.

23 A. Well, it was a very strange provision in the offering plan
24 that many of these units could not be occupied for more than 30
25 days without people having to leave the units and then come

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Cohen - direct

1 back again because of the zoning.

2 Q. What was the issue with that with respect to Ms. Campbell's
3 unit?

4 A. Well, she had been promised hers would be designated as one
5 of the extended stay units.

6 Q. And you're asking about the paperwork on that?

7 A. I am trying to establish it has been properly approved by
8 New York City.

9 Q. As of the 14th, that is the day before the closing -- day
10 before the inspection and two days before the scheduled
11 closing, had it been approved?

12 MR. BRAUN: I don't think this witness -- are you
13 asking for hearsay?

14 BY MR. ALTER:

15 Q. Had you been advised it had been approved?

16 A. No.

17 Q. Please read the second paragraph.

18 A. "I previously told you on numerous occasions we have not
19 agreed to close on April 16th so I don't know why you're
20 putting that date on your closing checklist.

21 "We are entitled to 10 days' adjournment and
22 additionally the proof as required in Paragraph 1 is a closing
23 condition that must be satisfied prior to the closing pursuant
24 to the First Amendment of the contract."

25 Q. You referred to here, sir, to 10 days' adjournment. In

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Cohen - direct

1 fact, you had a right to a two-week adjournment. Isn't that a
2 fact?

3 A. Correct.

4 Q. Did you nonetheless go forward with the inspection the
5 following day?

6 A. We did.

7 Q. Ms. Campbell had come in from California for that?

8 A. Yes, on very quick notice.

9 Q. Did you attend with Ms. Campbell?

10 A. I did.

11 Q. Who else attended on behalf of Ms. Campbell?

12 A. Paul Gleicher, Richard Gray, Lawrence Ubell.

13 Q. They have already been identified before you took the stand
14 so I'll move on. Who attended on behalf of the defendant?

15 A. Ramon Chicon and Stuart Marton.

16 Q. Where did you all meet up?

17 A. We met in the lobby.

18 Q. Please describe the lobby to the court.

19 A. The lobby was unfinished. Walking in, the floors were all
20 dusty. In the photographs we had seen these beautiful glossy
21 black and white floors that were supposed to be there. Instead
22 it was all faded white with sawdust or particle board dust.

23 To the left was the restaurant or what was purported
24 to be a restaurant. It was all closed up. I looked in the
25 glass to see what was going on, and it was unfinished, boxes

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Cohen - direct

1 and equipment. It was certainly not in any condition to be
2 opened.

3 On the right-hand side there was reception desk, and
4 that was unfinished. Then there were elevators straight ahead.

5 Q. Did you get upstairs by an elevator?

6 A. We did.

7 Q. Please tell us about the elevator.

8 A. Well, the elevator looked like a construction freight
9 elevator. It had padding inside.

10 Q. How was it summoned, if you recall?

11 A. It was a person who had to operate it.

12 Q. How was the elevator summoned, do you recall?

13 A. It was either by cell phone, walkie-talkie, somebody called
14 this fellow to operate it for us.

15 Q. Please describe the clothing the person operating it was
16 wearing.

17 A. He was wearing construction clothes.

18 Q. When you exited the elevator, did you walk through a
19 hallway to reach the apartment?

20 A. We did.

21 Q. Please describe the hallway.

22 A. I just remember that it seemed unfinished, there was no
23 carpeting, the walls weren't painted or wall papered. It was
24 just very unfinished.

25 Q. How long was the inspection?

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Cohen - direct

1 A. I'd say at least three hours, about two to three hours. It
2 seemed like forever.

3 Q. Did you all walk around together?

4 A. No.

5 Q. Was the heat and air conditioning working?

6 A. No.

7 Q. How do you know that?

8 A. Because I went over to the thermostat and reached up to see
9 how it worked and asked Mr. Marton how does this work.

10 Q. What did he respond?

11 A. He told me it doesn't, it is not connected.

12 Q. Was the hot water working?

13 A. It was not.

14 Q. How do you know that?

15 A. Because I went to the kitchen sink and I turned on the
16 water and put my hands under the water spout and the water
17 stayed cold.

18 Q. Did you have any conversation with Mr. Marton about that?

19 A. I did.

20 Q. And you said?

21 A. I said where's the hot water? How does it work?

22 Q. And his response?

23 A. And he said the boilers haven't been connected. There's
24 nobody living in the building so there is no hot water.

25 Q. Did you tell Ms. Campbell about the heat, air conditioning

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Cohen - direct

1 and hot water during the inspection?

2 A. I think I did.

3 Q. Did you inspect the stove to see if there were gas?

4 A. No.

5 Q. Why not?

6 A. Just by looking at it, you could see it wasn't able to be
7 used. There were missing burners or knobs.

8 MR. ALTER: I would like to read in, your Honor, from
9 Page 14 of the joint pretrial order, Joint Fact 52.

10 "On the day of the inspection, representatives of the
11 Mark Hotel informed Ms. Campbell and her representatives that
12 the heat, air conditioning and hot water systems were operable
13 at that time but had not been turned on."

14 So stipulated?

15 MR. BRAUN: Yes.

16 BY MR. ALTER:

17 Q. Going into the inspection, what date had the defendant
18 purported to schedule the closing?

19 A. The very next day, April 16th.

20 Q. Going into the inspection, did you expect the closing to
21 take place the next day?

22 A. No.

23 Q. Why not?

24 A. I had previously told them in e-mails it was an unrealistic
25 date, that we needed to inspect it and then check that all the

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Cohen - direct

1 proper paperwork had been presented, that the Sponsor had
2 fulfilled all of its conditions.

3 Q. Had you mentioned to them your contractual right to adjourn
4 the closing?

5 A. I had.

6 Q. Even if the inspection -- pardon me. Withdrawn.

7 Even if the scheduling had been valid and the
8 inspection had been fine, would you have been inclined to
9 exercise the two-week adjournment?

10 MR. BRAUN: I didn't understand that. May I read that
11 question.

12 (Pause)

13 MR. BRAUN: It is leading, your Honor.

14 THE COURT: It is leading. It is speculative, but I
15 am going to overrule the objection. Would you have exercised
16 the two-week adjournment provision even if everything was fine
17 on April 15th?

18 THE WITNESS: Typically having represented many
19 purchasers, I never wanted a purchaser that I was representing
20 to be the first person to close in a new building.

21 What I had discovered was sometimes we would go to a
22 closing and a closing that should take two hours would wind up
23 taking five hours because the sponsor wouldn't have their
24 papers together, they wouldn't have their mortgage
25 satisfactions together and we would waste a whole lot of time.

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Cohen - direct

1 Also I found the person who first moved into a
2 building was always subject to all kinds of start-up problems.
3 My preference was always to have my client, having had
4 experiences where they were the first to close, to have other
5 people be the guinea pigs and let them test out the Sponsor,
6 let them see see that all the paperwork is done so we can come
7 in for a fast closing and the beginning shake-out is done.

8 BY MR. ALTER:

9 Q. Now, of course, the ultimate decision whether to close
10 would be Ms. Campbell's. Is that correct?

11 A. Of course.

12 Q. I gather from your previous answer that you would have
13 recommended against it. Is that correct?

14 A. I would have.

15 Q. Had you discussed the timing of the closing with Ms.
16 Campbell before the day of the inspection?

17 A. I don't think we did.

18 Q. Incidentally, when did you first have a face-to-face
19 meeting with Ms. Campbell?

20 A. In the lobby right before the inspection.

21 Q. You never met with her before?

22 A. Correct.

23 Q. When were you planning on discussing with her when you
24 should close?

25 A. After we finished a good inspection that showed the

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Cohen - direct

1 apartment was habitable.

2 Q. Did you have such an inspection?

3 A. We did not.

4 Q. During the inspection, was anything said about going
5 forward or not going forward the next day, the closing?

6 A. I don't recall. I don't think so.

7 Q. What was your assumption as of the end of the inspection as
8 to whether there would be a closing the next day?

9 A. It would be impossible. It was not habitable. It was
10 dangerous. No one could live there, so it made no sense to
11 close the next day.

12 Q. Did the closing, in fact, take place on April 16th?

13 A. No.

14 Q. Did you have correspondence with Mr. Gleicher following the
15 inspection?

16 A. Excuse me?

17 Q. Rather than ask you that, let me ask you to please look at
18 defendant's exhibit --

19 A. One second. (Pause) Where were you?

20 Q. We were looking at Defendant's 28, if you will, which is
21 already in evidence. This is a long e-mail. We looked at
22 other parts of it. I would like to call your attention to the
23 latest which is the first e-mail in that chain, the one from
24 Mr. Gleicher to you and Ms. Campbell dated Thursday, the 16th,
25 at 11:18 am. Do you see that?

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Cohen - direct

1 A. Yes.

2 Q. Now I show you the second paragraph, call to your attention
3 the second paragraph where he says, "I have another thought on
4 a potential means to delay the closing."

5 Do you see that?

6 A. I see it.

7 Q. Had you requested he think of things to delay the closing?

8 A. No.

9 Q. What did you understand him to be talking about?

10 A. We had asked him to help compile a list that we could
11 present to the Sponsor of all the items that needed to be
12 repaired, or not repaired, but to be completed prior to a
13 closing.

14 Q. Did you have any correspondence with Mr. Canter on Friday,
15 the 17th?

16 At the risk of anticipating your answer, let me ask
17 you to look at Defendant's Exhibit 30, the second page of that,
18 please, e-mail from Ms. Campbell to you the morning, early
19 morning of Friday, the 17th. You received this e-mail from
20 Ms. Campbell?

21 A. Yes.

22 Q. Is there a link to a Washington Post site. Is that link
23 the article which is Defendant's Exhibit 29?

24 A. Yes.

25 Q. Turning to Defendant's Exhibit 30, did Ms. Campbell request

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Cohen - direct

1 that you forward the e-mail message in the link to Mr. Marton?

2 A. Yes, she did.

3 Q. Did you seek to do that via Mr. Canter?

4 A. Yes.

5 Q. That is the bottom e-mail on the first page of Defendant's
6 30?

7 A. Yes.

8 Q. Now, Defendant's Exhibit 30 talks about setting up a
9 conference call before Ms. Campbell leaves for California that
10 day. Do you see that?

11 A. I do.

12 Q. Did that conference call happen that Friday?

13 A. No. There wasn't enough time to arrange it.

14 Q. Did it eventually happen?

15 A. Yes.

16 Q. When was that?

17 A. The following Tuesday morning.

18 Q. That is the 21st? You have a calendar in front of you.

19 A. I think so, yes.

20 Q. Before that, on the 20th, did you have some e-mail
21 exchanges with Mr. Canter?

22 A. Yes.

23 Q. Let's look at Defendant's 31. Is this a letter that you
24 sent to Mr. Canter by Federal Express, an e-mail on the 21st of
25 April -- I am sorry. I apologize. Let me withdraw that and --

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Cohen - direct

1 I am sorry.

2 Defendant's Exhibit 31, is that an e-mail exchange you
3 had with Mr. Canter on the 20th?

4 A. Yes.

5 MR. ALTER: I offer Defendant's Exhibit 31 in
6 evidence.

7 MR. BRAUN: No objection.

8 THE COURT: Defendant's Exhibit 31 is received in
9 evidence.

10 (Defendant's Exhibit 31 received in evidence)

11 BY MR. ALTER:

12 Q. Let's look first at the earliest of these e-mails which is
13 on the second page of this exhibit bearing Bates number 00258.

14 The second sentence of it, "Raising your voice,
15 threats, telling me how to practice law, hostility and insults
16 directed at me will not get our client any closer to this
17 purchase."

18 Did you have a telephone conversation with Mr. Canter
19 just before this e-mail?

20 A. I did.

21 Q. Is that your characterization here in this e-mail of what
22 happened at that --

23 A. Yes. I wouldn't have written it if it wasn't.

24 Q. Finishing my question would be at that conversation.

25 Please give me a chance to finish my questions.

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Cohen - direct

1 I would like to turn to his response later that
2 morning which is the bottom e-mail on the first page bearing
3 Bates number 00257. I call your attention to the last sentence
4 of it which says, "Sponsor will not hesitate -- however,
5 Sponsor will not hesitate to enforce its rights, all of which
6 are reserved and none waived, including with respect to your
7 client's failure to post close title on the scheduled closing
8 date."

9 Now, sir, what did you understand Mr. Canter to be
10 saying to you in that e-mail?

11 A. He was threatening we would be in default because we hadn't
12 closed on April 16th, thereby entitling the Sponsor to keep the
13 down payment.

14 Q. You respond in the upper half of Defendant's 31. Is that
15 correct?

16 A. I did.

17 Q. And this is all the day before that four-way conversation,
18 correct?

19 A. Right.

20 Q. And that four-way conversation I believe you said took
21 place Tuesday, the 21st. Is that correct?

22 A. Right.

23 Q. Did you subsequently learn that defendant would have been
24 unable to close on the 16th?

25 MR. BRAUN: Objection; leading.

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Cohen - direct

1 THE COURT: Yes, sustained.

2 BY MR. ALTER:

3 Q. Did you subsequently learn whether defendant would have
4 been able to close on the 16th?

5 A. Yes.

6 Q. What did you learn?

7 A. That they couldn't have closed on the 16th.

8 Q. Why do you say that?

9 A. Well, from a legal document perspective, they had not
10 transferred the property, the Sponsor had not transferred it to
11 the apartment corporation. There were mortgage, mortgages that
12 had to be subordinated which had not been done and there were
13 operating agreements that needed to be signed and delivered
14 between the hotel and the co-op which hadn't been done.

15 Q. Did you know about this at the time?

16 A. No.

17 Q. Had you gone to closing on the 16th, would you have with
18 you learned about that?

19 MR. BRAUN: Objection; speculation.

20 THE COURT: Sustained.

21 MR. ALTER: Let me read Joint Fact 63 which is on Page
22 15 of the joint pretrial order. On April 17th, 2009 Sponsor's
23 attorneys filed with the New York County Clerk five documents,
24 all executed with knowledge on April 15th 2009 and dated as of
25 April 17th, 2009. Copies of these documents are exhibits

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Cohen - direct

1 defendant's 124 to 128."

2 So stipulated?

3 MR. BRAUN: Yes, your Honor. I also ask, if I may,
4 that the documents Defendant's 124 to 128 that are referred to
5 in this paragraph be received in evidence.

6 MR. ALTER: That was my next statement.

7 THE COURT: Defendant's Exhibits 124 to 128 are
8 received in evidence.

9 (Defendant's Exhibits 124 to 128 received in evidence)

10 BY MR. ALTER:

11 Q. Do you have defendant's book there? Please look at
12 Defendant's Exhibit 124 and 128. Are these containing the
13 documents about which you just testified?

14 A. Yes.

15 Q. Before we get to the conversation Tuesday morning, the
16 21st, let's go back to Defendant's 31.

17 If you recall, this was the e-mail exchanges of
18 Monday, April 20th. The top e-mail sent by you to Mr. Canter
19 at 10:11 am, do you see that one?

20 A. Yes.

21 Q. Can you please read that to us.

22 A. "Jonathan, after discussing with your client, if your
23 client is actually taking the ludicrous, bad faith and
24 litigious position that our client failed to close on what you
25 referred to as the scheduled closing date which was obviously

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Cohen - direct

1 prematurely scheduled by the Sponsor and is therefore in
2 default while there was no heat, no hot water, no elevator
3 service which would have been hazardous in the event of an
4 emergency and extremely inconvenient, floors unfinished, et
5 cetera, please let me know today.

6 "Sponsor was not and is not ready to close and to
7 assert otherwise is to disingenuous. If that is Stuart's
8 position, we will file a complaint with the Attorney General's
9 Office tomorrow. Hopefully that is not the direction that this
10 is going."

11 Q. Did you and Mr. Canter eventually manage to set up that
12 four-way conversation with Mr. Marton and Ms. Campbell?

13 A. Yes.

14 Q. That conversation we have heard testimony, is on Tuesday
15 morning, the 21st?

16 A. Correct.

17 Q. Where was Ms. Campbell at the time?

18 A. She was in California.

19 Q. How long did the conversation last?

20 A. I'd say 15 to 20 minutes, but I can't be sure.

21 Q. Please tell us as best you recollect the substance of that
22 conversation.

23 A. Well, we expressed -- I had spoken and also Ms. Campbell
24 spoke of our extreme and Ms. Campbell's extreme disappointment
25 with the condition of the apartment and the building when we

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Cohen - direct

1 saw it, that basically they could not possibly expect that she
2 could pay an additional \$14 million in cash to close the
3 purchase based on what we had seen there.

4 Because Lehman Brothers had collapsed, the financial
5 markets had been in turmoil, many buildings were having
6 troubles, we asked the Sponsor to give us assurances that they
7 had the financial wherewithal to actually complete the
8 building. Having seen what we saw, we were troubled and wanted
9 them to at least give us some assurance that they had the cash
10 available and they had the funds needed to finish the hotel and
11 the luxury suites.

12 Q. Did you get a response from the defendant's representatives
13 on that phone call?

14 A. Well, Mr. Canter snapped and immediately suggested you're
15 not entitled to them, you're not getting any assurances.

16 Q. Was there request to delay the closing until after the
17 hotel would be opened?

18 A. We did think that considering the circumstances, the most
19 prudent thing would be to have the closing delayed until it
20 became operational, the hotel, so we could see that they
21 actually had the means to finish the building.

22 Q. Was there a response to that request?

23 A. It was denied.

24 Q. Was there any discussion about whether you should have
25 closed on the 16th?

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Cohen - direct

1 A. He threatened that we would be in default, that, yes, we
2 should have closed.

3 Q. Prior to the inspection on April 15th, had you had contact
4 with counsel for any of the people that had agreements to
5 purchase other units of the Mark?

6 A. No.

7 Q. Subsequent to the inspection, did you have any contacts
8 with any such counsel?

9 A. I did.

10 Q. Why was that?

11 A. Well, because of the amount of money that was involved
12 here, we were very concerned and we wanted to find out if any
13 of the other purchasers were also being, as we saw, bullied by
14 the Sponsor to close in an unsafe and hazardous building.

15 We wanted to know if it was only us or there were
16 others that experiencing the same undue pressure to close in a
17 hazardous and unfinished building.

18 Q. What was the result of these contacts, if any?

19 A. There was no result.

20 Q. Why was that?

21 A. We found that our situation was different than the other
22 peoples' situation.

23 Q. In what way was it different?

24 MR. BRAUN: This is going to be hearsay if he will be
25 distinguishing his situation or his client's situation from the

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1 situation of other prospective purchasers. Based on whatever
2 communications he had with their attorneys, that is clearly
3 suffused with hearsay.

4 THE COURT: I don't know if he said that is the basis
5 for it. What is the basis for your understanding that Ms.
6 Campbell's situation was different from others who had entered
7 into contracts with the hotel?

8 THE WITNESS: Well, skipping ahead here, but I think
9 we were the only ones that got a letter from Kramer Levin that
10 said that we would not be entitled to come back for another
11 inspection.

12 MR. BRAUN: Again I don't know how the witness would
13 know what happened with respect to other purchasers.

14 THE COURT: How do you know that you were the only
15 party who didn't get an invitation for another inspection?

16 THE WITNESS: That is what we were told by other
17 counsel.

18 THE COURT: I am going to sustain the objection.

19 MR. ALTER: I'll move on, your Honor.

20 BY MR. ALTER:

21 Q. After that four-way conversation on the morning of the 21,
22 when was your next telephone or in-person conversation with
23 Mr. Canter?

24 A. There wasn't any.

25 Q. Are you saying that from then all the way up to the

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1 commencement of this litigation, you had no further telephone
2 or in-person conversations with Mr. Canter at all?

3 A. That's right.

4 Q. Did you have any correspondence with Mr. Canter that day
5 after the four-way conversation?

6 A. We did, yes.

7 Q. Is that Plaintiff's 30?

8 A. Yes.

9 MR. ALTER: That is in evidence already, your Honor.

10 BY MR. ALTER:

11 Q. Let's look at the last paragraph of that, stating that,
12 "Based on our telephone conversation this morning, we expect
13 that you will send a notice to us shortly claiming our client
14 is in default for failing to close on the scheduled date."

15 Did Mr. Canter, in the conversation that morning, the
16 four-way conversation, state that Ms. Campbell was in default
17 for failure to close on the 16th?

18 A. Yes.

19 Q. Had he said so in the e-mail the previous day, Defendant's
20 Exhibit 31?

21 A. He said they would not hesitate to enforce their rights.

22 Q. Including with respect to your client's failure to close
23 title on the scheduled closing date?

24 A. Right.

25 Q. Based on that conversation and that e-mail the day before,

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1 did you, indeed, expect him to send a notice of default, as you
2 say here?

3 A. I did.

4 Q. I see you demand returning of the down payment.

5 On what basis were you demanding return on the down
6 payment?

7 A. Really if you look at the letter as a whole, it was
8 conditional that if you are going to default Ms. Campbell and
9 take the ludicrous position that she was in default, then we
10 want our money back and we need to, may need to file with the
11 Attorney General's Office.

12 There was a feeling that in a contract like this,
13 there is an implied obligation of good faith and fair dealing,
14 and if they were going to be so far in breach of that, that we
15 would have no -- our only alternative would be to demand our
16 down payment back.

17 Q. How does that differ, if at all, from what you said in your
18 e-mail previous day, Defendant's Exhibit 31 -- yes, Defendant's
19 Exhibit 31?

20 A. It doesn't. It is the same.

21 Q. Was it your intention in this letter of April 21st,
22 defendant's letter of April 21 to repudiate the contract?

23 A. No, not at all.

24 Q. Did Mr. Canter, indeed, declare a default on the 16th?

25 A. He did not.

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1 Q. Please look at Plaintiff's Exhibit 312. Is that Mr.
2 Canter's response to your letter of April 21?

3 A. Yes.

4 Q. What is the date of that letter?

5 A. April 23rd.

6 Q. What is the first sentence of that letter?

7 A. "This responds to your April 21, 2009 letter."

8 Q. Let's look at the second page of that, the bottom paragraph
9 which begins in sum. The third line, let me read the sentence:

10 "As indicated above, notwithstanding the posturing,
11 preposterous demand reflected in your April 21 letter which we
12 will disregard, Sponsor believes your client still wishes to
13 proceed with the closing. As a final good-faith effort to
14 allow that to happen before Sponsor is forced to place your
15 client in default, terminate the purchase agreement and retain
16 the deposit as liquidated damages, Sponsor's is willing to and
17 hereby does adjourn the scheduled closing date until 9:00 am on
18 April 27th at our offices."

19 Did you also get a formal adjournment notice from Mr.
20 Wefels to that effect?

21 A. Did.

22 Q. Please look at Plaintiff's Exhibit 10 and tell me if that
23 is what you're talking about?

24 A. Yes.

25 MR. ALTER: I see, your Honor, Plaintiff's 32 at least

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1 with my marking it is not in evidence.

2 (Off-the-record discussion)

3 MR. ALTER: 32 is in, I understand, so let me just
4 offer Plaintiff's 10. That is also in, you're right, you are
5 correct, that is also in.

6 BY MR. ALTER:

7 Q. Did you respond to Mr. Canter's letter of the 23rd?

8 A. Yes.

9 Q. That is Plaintiff's Exhibit 12?

10 A. Right.

11 MR. ALTER: I offer Plaintiff's 12 in evidence.

12 MR. BRAUN: I think it is in by a different number. I
13 don't object to the document.

14 MR. ALTER: Give me a number and I'll be happy to take
15 it.

16 MR. BRAUN: I don't object.

17 THE COURT: Why don't you confer for a moment as to
18 whether it is in or not.

19 MR. ALTER: All right, we will do so.

20 (Off-the-record discussion)

21 MR. ALTER: Yes, your Honor, it is already in as
22 Defendant's Exhibit 37.

23 MR. BRAUN: Thank you.

24 BY MR. ALTER:

25 Q. Let me call your attention, sir, the court's attention to

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1 the first paragraph on the second page.

2 "I will discuss with Mrs. Campbell her availability to
3 return to New York to reinspect the unit prior to the
4 rescheduled closing date of May 11, 2009. After reinspection,
5 determination whether the building and unit are habitable, we
6 will advise whether we find the rescheduled closing date to be
7 valid. It seems quite strange and wrong we even have to
8 discuss the issue of habitability when considering purchasing
9 an apartment for almost \$19 million."

10 Did Mr. Canter respond to your letter of the 24th?

11 A. He did.

12 Q. Is that the Plaintiff's 13?

13 A. Yes.

14 MR. ALTER: That is already in evidence, your Honor.

15 BY MR. ALTER:

16 Q. What is the date of that letter?

17 A. April 28th, 2009.

18 Q. Please read the first sentence of it.

19 A. "This responds to your April 24th, 2009 letter."

20 Q. Let me read, sir, from the paragraph numbered 3, the first
21 two sentences thereof.

22 "We dispute and, therefore, again reject your
23 continued attempt most recently in your April 24th letter to
24 arrogate to purchaser rights that purchaser decidedly does not
25 have. Thus, having had an opportunity to inspect the suite

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1 prior to the duly scheduled closing date and having executed an
2 inspection statement, purchaser has no further right to inspect
3 the suite prior to closing."

4 Now, this letter, sir, is by Federal Express on April
5 28th. When did you receive this?

6 A. I assume April 29th.

7 Q. Did you also get a formal notice from Mr. Wefels adjourning
8 the closing to to May 11th?

9 A. I think so, yes.

10 Q. That is Defendant's 39. Am I correct?

11 A. Yes.

12 MR. ALTER: I offer Defendant's 39.

13 MR. BRAUN: No objection.

14 THE COURT: Defendant's Exhibit 39 is received in
15 evidence.

16 (Defendant's Exhibit 39 received in evidence)

17 BY MR. ALTER:

18 Q. What did you do after receiving Mr. Canter's letter and
19 reading it?

20 A. I immediately either called or e-mailed Ms. Campbell.

21 Q. Did you have a conversation with her when you e-mailed her
22 or not? Did you have a conversation?

23 A. Yes.

24 Q. Without going into details of your conversation, did you
25 and she reach certain conclusions?

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1 A. We did.

2 Q. First tell me what was your, Richard Cohen's conclusion?

3 A. I had never seen anything so ludicrous before and could not
4 recommend to my client that she should close on an apartment at
5 this price or even if it was a hundred thousand dollars without
6 having a chance to come back and have an inspection to see if
7 all these serious issues about habitability, hot water, heat,
8 incomplete elevators not functioning, I just couldn't recommend
9 to her that she should proceed without having another
10 inspection.

11 Q. What was Ms. Campbell's conclusion after your conversation
12 with her?

13 A. She agreed that it would be foolish to close with the
14 Sponsor breaching the contract like that.

15 Q. Was there any discussion about applying to the Attorney
16 General for refund of her down payment?

17 A. We did.

18 Q. Did you, in fact, make that application?

19 A. We did.

20 Q. Now, you received this letter on April 29th and you had
21 this phone call with Ms. Campbell on April 29th. On what date
22 did you begin to prepare the application to the Attorney
23 General?

24 A. The same day.

25 Q. Did you or anyone in your firm take any steps whatsoever to

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1 draft that application prior to learning on the 29th that there
2 would be no further inspection allowed?

3 A. No.

4 Q. Prior to your conversation with Ms. Campbell on the 29th,
5 had she authorized you to submit such an application?

6 A. No.

7 Q. Did you, therefore, actually submit such an application to
8 the Attorney General?

9 A. Afterwards, yes.

10 Q. Is that Defendant's 44?

11 A. Yes.

12 THE COURT: Mr. Alter, is this an appropriate juncture
13 to recess for the evening?

14 MR. ALTER: Yes, I think it is, your Honor.

15 THE COURT: All right. Mr. Cohen, you're excused
16 until tomorrow morning. We are going to resume at 10:00
17 o'clock.

18 THE WITNESS: Thank you.

19 THE COURT: You may step down. Be careful of the
20 wires. What witnesses do we have tomorrow?

21 MR. ALTER: Your Honor, we have agreed to take out of
22 turn tomorrow morning at 9:30 Mr. Gleicher. We are going to
23 interrupt Mr. Cohen's testimony and then at -- 9:45, I am
24 sorry, Mr. Gleicher and then --

25 MR. BRAUN: At 11:00, Mr. Chicon.

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1 MR. ALTER: Mr. Gleicher should be finished, I would
2 hope, now speaking for Mr. Brown as well as myself, I think he
3 will be finished by 11:00. Mr. Chicon we are taking out of
4 turn beginning at 11:00 o'clock. After Mr. Chicon, I would
5 presume we will continue with Mr. Cohen and I do have Mr.
6 Ubell, the inspector, lined up for tomorrow, but depending -- I
7 had him lined up for today, too -- depending on how it goes
8 tomorrow, we'll see if it is necessary.

9 (Off-the-record discussion)

10 THE COURT: All right. You don't have to be here at
11 9:45 tomorrow or 10:00 o'clock. They will give you their best
12 estimate of when you should be be hear.

13 Anything else at this time?

14 MR. ALTER: No, your Honor.

15 THE COURT: All right. Look, I think that one of the
16 things that needs to be addressed is why the Sponsor would not
17 give a second inspection of the premises.

18 MR. ALTER: I would respectfully suggest that is the
19 defendant's showing.

20 THE COURT: I am addressing my remarks to all sides in
21 the courtroom, that's all.

22 MR. ALTER: Thank you.

23 MR. BRAUN: Your Honor, we are going to offer evidence
24 that she was, in fact, given that opportunity.

25 THE COURT: All right. That is why --

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1 MR. BRAUN: We are disputing that.

2 THE COURT: -- that is why we are having a trial,
3 okay?

4 MR. ALTER: Okay.

5 THE COURT: Thank you. Mr. Cohen, you can step down.
6 (Court adjourned until 9:45 am on Tuesday, June 19,
7 2012)

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